

2

1

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 2824/2003

New Delhi, this the ^{3rd} day of March, 2005

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

A.G.C. Rajan,
Son of Late Shri A.K. Balagangadharan,
Aged 58 years,
Assistant,
Navel Headquarters,
DGAS/West Block No.V,
R.K. Puram, New Delhi-110 066

... Applicant

(By Advocate : Shri S.N. Anand)

- Versus

1. Union of India
Through Defence Secretary,
Ministry of Defence, South Block,
New Delhi - 110 011
2. The Chief of the Naval Staff,
Through Directorate of Civilian Personnel,
Navel Headquarters,
New Delhi - 110 011

... Respondents

(By Advocate : Shri Arun Bhardwaj)

O R D E R

BY S.K. MALHOTRA, MEMBER(A):

This OA has been filed by the applicant with the prayer that the respondents may be directed to grant him the pay scale of Rs.5500-9000 to bring him at par with the Assistants in Armed Forces Headquarters w.e.f. 1.1.1996.

2. The applicant joined the Indian Naval Armament Supply Organization (NASO) as LDC in 1966. He was promoted as UDC in 1986, and thereafter to the post of Assistant (erstwhile Office Superintendent Grade-II) in the pay scale of Rs.5000-8000/- in January, 2000. It has been contended that the Assistants of Armed Forces Headquarters are placed in the pay scale of Rs.5500-9000, whereas the applicant, who is an Assistant in NASO working at the Naval Headquarters is placed in the lower pay scale of Rs.5000-8000. Thus, there is a disparity in the

②

pay scale which is in violation of the accepted principle of 'equal pay for equal work'. According to him, his responsibilities are more than those of the Assistants in the Armed Forces Headquarters, who have been granted higher pay scale. The 5th Central Pay Commission (CPC) vide para 46.17 had recommended upgradation of 10% of the posts of UDC to the post of Assistant (Office Superintendent Grade-II). However, the respondents down-graded the post of Office Superintendent Grade-II, which is a supervisory post, to the post of Assistant, which is a clerical post. It is contended that the post of Office Superintendent Grade-II was replaced by Assistant in the pay scale of Rs.5000-8000 in various other Central Government Organizations. However, subsequently the Government issued order revising the pay scale to Rs.5,500-9,000/- w.e.f. 1.1.1996. This benefit has not been extended to him. Besides according to the 5th CPC recommendations, the Assistants serving in the Armed Forces Headquarters are equally placed as the Assistants in NASO and there is no reason for disparity in their pay scales, especially when higher pay scale has been granted to all Defence Establishments like DGOF, Military Engineering Services, Defence Research and Development Organization etc.

3. The respondents have filed a counter reply in which they have mentioned that similar issue raised in the present OA was adjudicated in OA No.1084/2003, ADR Afonso vs. UOI and Others, and the Tribunal vide its order dated 30.4.2003 had dismissed the claim of the applicant (Annexure R/1). It has been mentioned that no post of Assistant existed in the lower formation prior to the implementation of the 5th CPC recommendations. The 5th CPC redesignated the post of Office Superintendent Grade-II, who were in the pay scale of Rs.1400-2300/- (pre-revised) to the post of Assistant in NASO and granted them the revised pay scale of Rs.5,000-8,000/-. As against this the Assistants in AFHQ were already in the pay scale of Rs.1640-2900/- which was revised to Rs.5,500-9,000/- based on the recommendations of the 5th CPC. The 5th CPC in para 46.9 of the report had specifically stated that Assistants in the Secretariat have always been given a special status as they are holders of Group 'B' post and they always had the higher pay scale compared to Assistants in non-Secretariat Organizations. Besides, there has been a significant (50%) of direct recruitment in the grade with higher educational qualification of graduation in the case of Assistants who performed more complex duties and are involved in analyzing issues which have policy implications. As against this, the Assistants in the Subordinate Offices are confined to routine matters related to establishment, personnel and general administration only. In so far as NASO is concerned, 10% of the total strength of UDCs working in the lower formation of Navy were upgraded to the post of Assistant in the pay scale of Rs.5,000-8,000/- although the replacement scale of Rs.1400-2300 was Rs.4,500-7,000/-. However, the Government upgraded the post to the scale of Rs.5,000-8,000/-. In other words, the applicants are already enjoying an upgraded pay scale compared to what they would have normally been

C.

entitled to had only the replacement scale been given to them. Besides the entry level qualification of the applicant is only Matriculation whereas 50% of the vacancies for the post of Assistants in Armed Forces HQs are filled by direct recruitment through SSC for which the minimum qualification is graduation and it is a Group-B post. It has been specifically stated that the duties and responsibilities of the Assistants in the Secretariat/AFHQ are much more complex as compared to their counter-parts in the Subordinate Offices. The applicant is the holder of Group 'C' post and the recruitment is made through the respective Command Headquarters.

4. The main point raised by the learned counsel for the applicant is that no distinction can be made in the pay scale based on entry level qualification. According to him many non-participating organizations in CSS have been given the pay scale of Assistant. He contended that while the entry level qualification for them was Matriculation, many Assistants working in the Armed Forces Headquarters are having the same qualification of Matriculation. Besides the above, even in CSS an LDC/UDC promoted as Assistant (other than direct recruits) are holding Matriculate qualification, but there is no disparity in the pay scale of Assistant in CSS whether he is directly recruited or is a promottee. There is, therefore, no reason why such a disparity in the pay scales should be exercised in the Armed Forces HQrs and those working in NASO. On the other hand, the learned counsel for the respondents was of the view that the applicant, was not holding the post of Assistant prior to the implementation of the 5th CPC recommendations and his post was only redesignated to that of an Assistant in the NASO. He was earlier in the pay scale of Rs.1400-2300/- while the Assistants in AFHQ were in the pay scale of Rs.1640-2900. No comparison can therefore be drawn.

5. During the course of argument, the learned counsel for the applicant referred to the decision taken by the Tribunal in the case of S.K. Sareen vs. UOI and Others, OA 777/1999 decided on 20.12.1999 in which it was held that the Private Secretaries attached to the Vice Chairman and Chairman should be considered for the pay scale equivalent to the Private Secretaries to the Government of India. In this OA, a Writ Petition was filed in the High Court which was dismissed and later the SLP was also dismissed by the Hon'ble Supreme Court. He cited another judgement of the Gauhati Bench of this Tribunal in OA No. 63 of 1997 decided on 14.9.1999 wherein directions were issued to consider grant of parity of pay scales to the Senior Auditors with that of Assistants in Central Secretariat. The learned counsel for the applicant has contended that similar parity of pay scale should be extended to the applicant in the present case also.

Q

6. After hearing the rival contentions of both the parties, we observe that there is no dispute about the fact that the applicant was earlier in the pay scale of Rs.1400-2300 (pre-revised) while the Assistants working in AFHQ with whom he is seeking parity of the scale were in the pay scale of Rs.1640-2900/- (pre-revised). The replacement scale of pay of Rs.1400-2300/- is Rs.4,500-7000/- whereas he had been given the pay scale of Rs.5,000-8,000/- which is an upgraded pay scale to which he was otherwise entitled to according to the 5th Pay Commission report. Besides, the duties and responsibilities of Assistants in AFHQ are much more complex and cannot be compared with the duties and responsibilities of the Assistants in NASO, which are in the nature of routine work. The entry level qualification is also different. While the entry level qualification is Matric for the applicant, 50% of the Assistants in AFHQ are directly recruited for whom the minimum qualification is Graduation. For parity of pay scales, it is necessary that the minimum educational qualification, nature of duties, both qualitatively and quantitatively should be the same. In the present case, the above criterion is not satisfied. Even the pay scales of both the posts before implementation of the 5th Central Pay Commission report were different. There is, therefore, no ground for granting parity of pay scales to these two posts. In so far as the two judgements cited by the learned counsel for the applicant are concerned, it may be stated that in the case of S.K. Sareen (supra), the facts and circumstances of the case are quite different. The doctrine of equal pay for equal work cannot be made applicable in a mechanical way. It will depend on the facts of each case. The case in OA No. 63 of 1997, referred to above relates to pay parity of Senior Auditors with Assistants in the Central Secretariat. The scales of pay of both these categories of employees were the same earlier. Some anomaly had crept in later which was sought to be corrected. This is not so in the present case, as Assistants in both these organizations were earlier drawing different pay scales and no anomaly has been pointed out. Both these judgements cannot, therefore, be made applicable in the instant case.


7. It may be stated that the responsibility of determination of the pay scale for any post or a category of post lies with the expert body like the Pay Commission or any other expert body set up by the Government. The Tribunal is not an expert body and does not have the required infrastructure to compare the nature of duties of the staff in a particular job to recommend a higher pay scale. In this connection, we are relying on the judgements of the Hon'ble Supreme Court in the case of State of UP vs. J.P. Chaurasia { (1989) 1 SCC 121}, State of Haryana vs. Jasmer Singh & Others {1997 (1) SCC 137}, Umesh Chandra Gupta vs. ONGC {1989 SCC (L&S) 522}. In the case of Supreme Court Employees Welfare Association, the Hon'ble Apex Court has held as under:


1

“It is for the administration to decide whether two posts which very often may appear to be the same or similar should carry equal pay, the answer to which depends upon several factors, namely, evaluation of duties and responsibilities and it should be left to the expert bodies like the Pay Commission. The Court should normally accept the recommendations of the Pay Commission”

8. In another case of *State of Haryana and Anr. Vs. Haryana Civil Secretariat Personal staff Association* {JT 2002 (5) SC 189}, it was held that the functions of the two posts may be the same, but there may be qualitative difference as regards reliability and responsibility. The value judgement has to be made by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgement is made bona-fide, reasonable on an intelligible criterion, which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. In another judgement of the Hon'ble Supreme Court in *Union of India & Anr. Vs. P.H. Hariharan & Anr.* (Civil appeal no. 7127/93) decided on 12.3.1997, their Lordships even expressed anguish after having noticed that quite often, Tribunals are interfering with pay scales, without proper reasons and without being conscious of the fact that pay fixation is not their function and without realizing that change of pay scale has a cascading effect. Tribunals have been warned to exercise due restraint in the matter and “unless a clear case of hostile discrimination is made out there would be no justification for interfering with fixation of pay scale”. No such hostile discrimination has been pointed out in the instant case. We are therefore not inclined to interfere in the matter.

9. Taking into consideration the facts and circumstances of the case and the judgements cited above, the OA turns out to be devoid of any merit and the same is accordingly dismissed. No costs.


(S.K. Malhotra)
Member (A)


(Shanker Raju)
Member (J)

/PKR/