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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2951/2003

New Delhi this the 21st day of April, 2010

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Dr. Veena Chhotray, Member (A)

Kuldip Singh,
Junior Accounts Officer,
Central Administrative Tribunal,
Principal Bench,
New Delhi.

...Applicant.

(By Advocate Shri L.R. Khatana)

VERSUS

1. Central Administrative Tribunal,
represented by its Principal Registrar,
Principal Bench,
New Delhi.

2. The Secretary,
Department of Personnel & Training,
North Block,
New Delhi.

3. The Secretary,
Ministry of Finance & Company Affairs,
(Department of Expenditure),
New Delhi.

...Respondents.

(By Advocate Shri A.K. Bhardwaj)

O R D E R

Shri Shanker Raju, Member (J):

In the matter of revision of pay scale on invoking the
doctrine of principles of equal pay for equal work, which

had partaken^k the character of a fundamental right, the following observations have been made by the Apex Court in **State of Kerala Vs. B. Renjith Kumar & Ors.** (2009

(1) SCC (L&S):

“The principle of "equal pay for equal work" has been considered, explained and applied in a catena of decisions of this Court. The doctrine of "equal pay for equal work" was originally propounded as part of the Directive Principles of State Policy in Article 39(d) of the Constitution. Thus, having regard to the Constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of "equal pay for equal work" has assumed the status of fundamental right”.

2. In **Union of India & Ors. Vs. Dineshan K.K.** (2008

(1) Scale 74), insofar as interference in pay matters in judicial review, the following observations so highlighted are relevant:

“10. Initially, particularly in the early eighties, the said principle was being applied as an absolute rule but realizing its cascading effect on other cadres, in subsequent decisions of this Court, a note of caution was sounded that the principle of equal pay for equal work had no mathematical application in every case of similar work. It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the Executive and expert bodies like the Pay Commission etc. It has been emphasized that a carefully evolved pay structure ought not to be ordinarily disturbed by the Court as it may upset the balance and cause avoidable ripples in other cadres as well. (Vide: Secretary, Finance Department & Ors. Vs. West Bengal Registration Service Association &

Ors. and State of Haryana & Anr. Vs. Haryana Civil Secretariat Personal Staff Association . Nevertheless, it will not be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the Executive, the Court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the Executive or the Legislature, as is sought to be canvassed on behalf of the appellants. Undoubtedly, when there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification of posts is ex-facie irrational, arbitrary or unjust, it is open to the Court to intervene”.

3. In **Nehru Yuva Kendra Sangathan Vs. Rajesh Mohan Shukla and Ors.** (2007 (6) SCC 9), it has been ruled that once the employees are discharging identical duties with all functional requirements, they are entitled to the benefit of similar pay scale, as permitted to counterparts in a same situation.

4. With the above backdrop, applicant, a Junior Accounts Officer, working in Central Administrative Tribunal since 30.09.1992, on the basis of Ministry of Finance and Company Affairs, Department of Expenditure O.M. dated 28.02.2003 by which pay scales have been revised on notional basis w.e.f. 01.01.1996

and on actual basis w.e.f. 19.02.2003 to the staff belonging to organized accounts department, has sought grant of pay scale of Rs.6500-10500 on notional basis w.e.f. 01.01.1996 and with actual benefits with arrears w.e.f. 19.02.2003.

5. After the O.A. was admitted, an order passed on 08.09.2004 took cognizance of decision of the High Court of Karnataka in **Union of India Vs. Sri Unni Menon** (WP No. 33496/2000), decided on 18.04.2004 whereby the decision of the Tribunal in OA 15/99, decided on 01.03.2000 holding Accounts Department in the CAT as organized cadre, was overturned. But SLP is pending before the Apex Court and the law will take its own course. The O.A. was disposed of with liberty to the applicant to revive it on availability of decision in SLP.

6. M.A. 649/2010 filed by the applicant sought modification in the order passed on 08.09.2004 by relying upon the decision of the co-ordinate Bench of SOs/PSs in CAT in 164/2009, **S.R. Dheer & Ors. Vs. Union of India & Ors.**, decided on 19.02.2009 as well as the decision of the Apex Court in **State of Mizoram and Anr. Vs. Mizoram Engineering Service Association and Anr.** (2004 (6) SCC 218), wherein denial of pay scale

on the ground that the service is not an organized one, has not been found to be an impediment for invoking the doctrine of principles of equal pay for equal work. Learned counsel stated that the issue is no more *res integra* and the order may be modified and the matter be heard finally.

7. An order passed on 05.04.2010 allowed the M.A and listed the case for final hearing with a notice to DOPT as well as Ministry of Finance. In pursuance thereof, Shri A.K. Bhardwaj, learned counsel for the respondents, was heard on appearance.

8. The brief factual matrix of the case transpires that the applicant, who was absorbed in CAT as Senior Accountant on 01.11.1990, was promoted as Junior Accounts Officer, w.e.f. 30.09.1992. Respondent No. 3, Ministry of Finance and Company Affairs, Department of Expenditure, vide O.M. dated 28.02.2003 allowed in all Ministries/Departments of Govt. of India the higher pay scales for the staff belonging to the organized service notionally from 01.01.1996 and actually from 19.02.2003. By an order passed on 04.03.2003, the pay scale of Rs.6500-10500 was extended to Junior Accounts Officers in Central Civil Accounts Service. Accordingly,

vide Office Order dated 06.05.2003 of the Central Administrative Tribunal, Principal Bench, the pay of the officers and staff of Pay and Accounts Office, CAT, was fixed in the higher scales of pay, which led to representation by the applicant for grant of upgraded pay scale of Rs.6500-10500. An internal communication by the DOPT dated 25.06.2003 sought from the CAT a self contained proposal for extension of the benefits to the accounts personnel of CAT as per O.Ms. dated 28.02.2003 and 04.03.2003.

9. Learned counsel for the applicant states that as per the notified Rules, the CAT has its own separate accounts service having the sanctioned posts of Deputy Controller of Accounts, Accounts Officer, Junior Accounts Officer, Senior Accountant and Junior Accountant. As per GSR 825 (E) dated 31.10.1985, Central Administrative Tribunal (Staff) (Conditions of Service) Rules, 1985, provided that the conditions of service of the officers and other employees of the Tribunal in matters of pay and allowances shall be regulated in accordance with such rules and regulations as are for the time being applicable to officers and employees belonging to Group A, Group B, Group C as well as Group D, as the

case may be, of the corresponding scales of pay stationed at those places. Learned counsel further states that when upgraded pay scales have been made applicable to all Central Government offices, CAT being one such organization, the employees of CAT in corresponding grades cannot be denied the same benefit as it will be an invidious discrimination with hostility. Learned counsel would contend that once when there is accounts cadre in CAT with duly notified rules, the same has to be treated as an organized cadre and rightly the co-ordinate Bench of the Tribunal in **Unni Menon's** case (supra) ruled the same. Though the High Court of Karnataka had overturned the decision of the Tribunal in **Unni Memon** (supra), but the SLP is pending and the law will take its own course.

10. Learned counsel has subsequently stated that once the parity of SOs and PSs with CSS/CSSS has been established in **S.R. Dheer's** case (supra), the same would *mutatis mutandis* apply to the accounts cadre of the CAT and the higher pay scales cannot be denied to the applicant as Junior Accounts Officer.

11. Learned counsel has brought to our notice the case of **State of Mizoram** (supra) where the higher pay scales

were denied on the ground that Engineering Service in the State was not an organized service. The Apex Court in the aforesaid case ruled as follows:

“6. Great stress was laid on the fact that Engineering Service in the State was not an organized service and therefore, it did not have categorization by way of entrance level and senior level posts and for that reason the higher scale of Rs. 5900-6700 which was admissible for senior level posts could not be given in the Engineering Service. The main reason for dubbing Engineering Service as an unorganized service in the State is absence of recruitment rules for the service. Who is responsible for not framing the recruitment rules? Are the members of the Engineering Service responsible for it? The answer is clearly 'No'. For failure of the State Government to frame recruitment rules and bring Engineering Service within the framework of organized service, the engineers cannot be made to suffer. Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly any difference in organized and unorganized service so far as Government service is concerned. In Government service such a distinction does not appear to have any relevance. Civil Service is not trade unionism. We fail to appreciate what is sought to be conveyed by use of the words 'organised service' and 'unorganised service'. Nothing has been pointed out in this behalf. The argument is wholly misconceived”.

12. If one has regard to the above, having failed to declare the accounts service of the Tribunal as organized service, which is not only regular accounts service but also governed by the notified rules, first of all, it has to be treated as an organized service. Even if the issue is *sub* *judice* before the Apex Court, the same would not come in

the way of the applicant to be accorded the benefits of higher pay scale on the principles of equal pay for equal work as failure to frame the rules by the Government and bring the accounts service of the CAT as an organized service, cannot be blamed on the applicant. Learned counsel states that in one of the decisions of the Tribunal in OA 208/1997 in **J.R. Chobedar Vs. Union of India & Ors.** decided on 24.02.2004 pertaining to the accounts service in Border Security Force, the issue of organized and unorganized service has not been found to be apt in law and relying upon the decision of the Apex Court in **Randhir Singh Vs. Union of India & Ors.** (1982 (1) SLR 756), equal pay for equal work was allowed to grant the revised pay scales. This decision of the Tribunal when assailed in the High Court of Delhi in WP (C) No. 20065-67/2004), a judgment dated 25.01.2005 not only affirmed the decision of the Tribunal but the following observations have been made:

“Similarly, on 7th December, 1995, the BSF, Pay and Accounts Division also taking into consideration the rejection by the Ministry of Finance disposed of the application of the respondent that it cannot be treated as an organized accounts service. On the basis of the aforesaid, it was contended before us that the finding of the learned Tribunal in the impugned order is not as per the report of the Pay Commission and BSF and there

was no cadre of the Accounts Officer in the BSF and the anomaly has come up in view of the re-structuring of the cadre. In our view the reliance by the petitioner on the letter dated 6th September, 1995 (supra) is misplaced. The point raised by the learned counsel for the petitioner was considered in depth by the Tribunal and on the basis of the material before the Tribunal, the Tribunal gave the opinion that if certain sales were missing that will not take away the trait of the organized cadre. It was also considered that the method and manner of promotion has nothing to do with a cadre being organized or not. If it has other traits that it is a cadre comprising of reasonable number of persons, they have specific rules in this regard and there is no other factor which prompts one to conclude that it is an unorganized cadre. Relying upon the judgment of this Court in T.N. Natarajan and Ors. v. Union of India and Ors. in CWP 176/1979 decided on 3rd September, 1980 which also dealt with a similar controversy, it was held by the Tribunal by a reasoned order that the cadre of the respondent was an organized cadre.

4. We find no infirmity with the impugned order. No other point has been urged before us. We find no merit in the petition. Dismissed."

13. The aforesaid decision was also upheld by the Apex Court in CC 6923-6925/2005 by an order dated 29.07.2005. Learned counsel states that in all fours, the present issue is covered by the aforesaid ratio. Shri Khatana further relies upon the decision of the Tribunal in OA 969/2006, **R.K. Sharma & Ors. Vs. Union of**

India & Ors. decided on 10.05.2007 whereby on the basis of the judgment in **J.R. Chobedar** (supra), the applicants, Junior Accounts Officers, were allowed to grant the higher pay scale of Rs.6500-10500. While it was challenged before the High Court in WP (C) No.7231/2007, decided on 29.05.2009, not only the decision of the Tribunal has been upheld but the issue regarding financial constraints has been repelled on the basis of **State of Mizoram** (supra) with the following observations:

"6. In the present case, the petition does not disclose on what basis the respondents are being treated as members of an unorganized service while those holding cadre posts in Civil Accounts Service are being treated as belonging to Organized Accounts Service. This is not the case of the petitioner that they are performing different functions or that their qualifications for entry in service or promotion etc are different. The very fact that the petitioner has accorded the higher scale to the respondents, albeit from a later date, indicates that the petitioner accepts that there is no such distinction between the respondents and those holding cadre posts, as would disentitle them from the same pay which is being drawn by the holders of cadre posts.

7. In view of the above, we find no ground to interfere with the order passed by the Tribunal. The writ petition is devoid of any merit and is hereby dismissed."

14. On the other hand, respondents' counsel vehemently opposed the contentions of learned counsel for the applicant and stated that an Accounts Officer in Allahabad Bench of the Tribunal had preferred O.A. 45/2010 for grant of upgradation of grade pay of Accounts Officers from Rs.4600 to Rs.5400, which was disposed of by order dated 13.01.2010, with a direction to the respondents to pass a speaking/reasoned order. In compliance of the aforesaid order of the Tribunal, respondents have passed an order dated 15.04.2010 wherein it is stated that as per the CCS (RP) Rules, 2008, the Accounts Officers of the Organized Accounts Cadre have been placed in the scale of Rs.8000-13500 with the Grade Pay of Rs.5400 in the Pay Band-2. The acceptance of the request of the applicant would, therefore, place the Accounts Officers of the CAT in a higher pay scale of PB-3 with grade pay of Rs.5400 than the Accounts Officers of the Organized Accounts Cadre which would not be justified. Learned counsel would also contend that the Sixth Pay Commission in para 3.8.5 has not considered any parity between various posts in organized and un-organized Accounts Cadre and has recommended that the existing relativity between the accounts related posts

outside organized accounts cadres and ministerial posts shall be maintained. As such, as Accounts Officers in the CAT had no pre-existing relativity prior to 01.01.2006 with the SOs/PSs in CAT as well as the SOs/PSs of the CSS, their claim has been turned down. Learned counsel would also rely upon to distinguish the case of **J.R. Chobedar** (supra) by contending that there are two separate cadres organized and unorganized in the accounts service. In the counter reply, it is stated that the word 'appropriate Government' is defined by Section 2 (d) of the Act and under Section 13 (2), the salaries, allowances and conditions of service of the officers and other employees of a Tribunal shall be such as specified by Rules made by the 'appropriate Government'. The Accounts Staff of the Central Administrative Tribunal cannot be called as an Organized Accounts Cadre and the Vth Pay Commission in its report has stated that the Organized Accounts cadres are mainly in the Indian Audit & Accounts Department under the Comptroller & Auditor General of India. As such, there are separate rules governing the conditions of service of other Organized Accounts Cadre. Learned counsel would further contend that the applicant is not entitled for the benefit of the O.M. and he prays for dismissal of the O.A.

15. We have carefully considered the rival contentions of the parties and perused the material on record.

16. Any administrative jurisdiction executed cannot take defence of financial constraints for grant of fundamental right of parity in pay scale, as ruled in **Haryana State Minor Irrigation Tubewells Corporation & Ors. Vs. G.S. Uppal & Ors.** (2008 (7) SCC 375). When an administrative authority acts whether it includes the Cadre Controlling Authority or Ministry of Finance, any order passed on administrative side on all fours is to be decided on the touchstone of reasonable object sought to be achieved, as ruled in **Noida Entrepreneurs Assn. Vs. Noida & Ors.** (2008 (1) SCC (L&S) 672). The equality in law has to prevent hostile discrimination which has no reasonable nexus with the object sought to be achieved, which is an act on administrative side, cannot pass the twin test in the wake of Article 14 of the Constitution of India.

17. In judicial functioning, if a decision arrived at earlier like in the present case, is *sub judice* in the Supreme Court, it is open for us to modify the orders in view of subsequent events and changed circumstances. As the decision of the High Court of Karnataka in **Unni**

Menon (supra) ruled against for the purposes of grant of parity of pay, service in Accounts Cadre as an organized one since not having been overturned and modified by the Apex Court, may not hold a valid precedent, but decision in **Mizoram's** case (supra) covers the issue. In the event of a decision arrived in *sub judice* SLP, law shall take its own course. However, from the stand taken by the respondents, it is clear that denying the pay scale and benefit of O.M. dated 28.02.2003 to the applicant, is solely on the ground that the Accounts Cadre in the Tribunal is not an organized cadre. However, what has been allowed to the Junior Accounts Officers in other Ministries/Central Government Departments as well in Organized Accounts Departments, is the pay scale of Rs.6500-10500. CAT (Staff) (Conditions of Service) Rules, 1985, more particularly Rule 4, provides that the conditions of service of officers and other employees of the Tribunal, including accounts cadre, in the matter of pay and allowances, etc. are to be regulated in accordance with the rules and regulations, as are for the time being applicable to officers and employees belonging to Group A, Group B, Group C as well as Group D of the Central Government, which leads no doubt in our mind that when statutory rules on subordinate legislation have

been framed by the Government, the administrative orders would not override it. As such, whatever the pay scales are promulgated for the accounts cadre in other Ministries and Departments, the same would have to be *mutatis mutandis* adopted in the accounts cadre of the CAT, especially when there is no case made out by the respondents as to the functional requirement of accounts cadre in Tribunal being at variance and distinction in discharge of duties and responsibilities attached to the posts in accounts cadre with that of their counterparts in other Departments and Ministries. It is to be noted that as per Notification dated 17.12.1998 promulgating Central Administrative Tribunal (Staff) (Conditions of Service) Amendment Rules 1998 a JAO has been placed in the pay scale of Rs.5500-9000 but an explanatory memo refers to the CAT (Staff) (Conditions of Service) Rules of 1985 whereas the accounts cadre officers are to be placed and extended the revised pay scale, as recommended by the Vth CPC. Vth CPC would have allowed lesser pay scale but once the pay scales of Junior Accounts Officers have been revised from Rs.5500-9000 to Rs.6500-10500 by the Central Government to their employees, in various departments and Ministries, the same cannot be denied to the applicant as the objection

of organized service would have no impediment as what is required under the statutory rules of the Tribunal is parity with the counterparts on extension of pay scales by Government orders. The pay scales have not been accorded to the applicant with a stipulation that the accounts service in the CAT is not an organized service. Rather, the question of unorganized or organized service would have no bearing in granting a higher pay scale to the applicant because accounts cadre in the Tribunal is a regular one governed by notified Government rules which are the essential ingredients and components. As such, the accounts service in the Tribunal has to be treated as a deemed organized cadre for the purposes of pay and allowances.

18. The contention put forth by the respondents' counsel as to the decision of the Allahabad Bench and an order passed on 15.04.2010 taking resort to the recommendations of the VIth CPC for grant of pay bands, is not sustainable, since in the present case, we are adjudicating the issue which is earlier to the VIth CPC recommendations i.e. grant of benefit of Vth Pay Commission notionally from 01.01.1996 and actually w.e.f. 19.02.2003. When the VIth CPC recommendations

and CCS (RP) Rules, 2008 have not come into existence, a prospective administrative decision would not be applied retrospectively to deprive the applicant of his rightful claim.

19. Insofar as the organized cadre is concerned, on the analogy that when SOs and PSs of Tribunal could have been treated at par with CSS where accounts cadre is being given the higher pay scales as per Ministry of Finance O.M. dated 28.02.2003, it would be illogical not to have applied the parity in all its implications to the accounts cadre of the CAT, as decided in **S.R. Dheer's case** (supra), which has since been implemented. Accepting the aforesaid proposition, we cannot take a contradictory stand approbating and reprobating simultaneously in case of accounts cadre to deprive the applicant the benefit of O.M. dated 28.02.2003.


20. Assuming that the decision as to organized cadre is genesis for rejecting the request of the applicant for grant of higher pay scale, irrespective of whether the accounts service in the Tribunal is an organized one or not, observations of the Supreme Court in **State of Mizoram's** case (supra) that failure of the government to frame the rules and bring the Engineering service as an

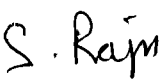
organized service cannot be attributable as a fault to the applicants, are relevant to the present case. Since the applicant has been discharging duties with all functional requirements and all pre-conditions satisfied at par with their counterparts, there would be hardly any difference in organized and unorganized service. Insofar as the Government service is concerned, this distinction is irrelevant. What is to be tested in grant of higher pay scale is the doctrine of principles of equal pay for equal work, which is well explained in **B. Renjith Kumar and Nehru Yuva Kendra Sangathan** (supra) and as there has been no case established by the respondents that the applicant is not discharging functions and duties attached to the post at par with their counterparts, the principle of equal pay for equal work would *mutatis mutandis* apply for grant of higher pay scale on notional and actual basis based on the O.M. dated 28.02.2003.

21. Moreover, **State of Mizoram's** case (supra) which has been upheld upto the Apex Court level has applicability and the distinguishability shown by the respondents' counsel is misconceived. As such, when in all Ministries and Departments, organized accounts cadre gets the higher pay scales while performing

identical duties which are being performed by the applicant, we do not find any intelligible differentia which has a reasonable nexus with the object sought to be achieved and such a distinction is not logical but hostile, invidious, and in breach of Article 14 of the Constitution of India. Moreover, **R.K. Sharma's** case, which decided the aforesaid plea was affirmed by the High Court, which in all fours covers the present issue.

22. Resultantly, O.A. is allowed. Respondents are directed to grant the benefit of upgraded pay scale of Rs.6500-10500 to the applicant on notional basis w.e.f. 01.01.1996 and with actual benefits w.e.f. 19.02.2003 with arrears within a period of two months from the date of receipt of a copy of this order. No costs.


(**Dr. Veena Chhoray**)
Member (A)


(**Shanker Raju**)
Member (J)

“SRD”