

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2996/2003

New Delhi this the 29th day of October, 2004

Hon'ble Mr. Justice M.A.Khan, Vice Chairman(J)
Hon'ble Mr. S.K. Malhotra, Member (A)

1. Kishan Chand Sharma,
S/o Shri Amar Singh,
Village: Devli, PO: Asaoti,
Distt. Faridabad
Tehsil: Palwal, Haryana
2. Shiv Raj Vats,
S/o Shri Bhagwan Sarup.
Village & PO: Basai, Distt. Gurgaon.
3. Virender Pal Singh,
S/o Sh. Prem Singh,
C-39, Inderpuri, New Delhi
4. Nilip Kumar Minj,
S/o Sh. Augustus Minj,
R/o H-297, Nanakpura,
Moti Bagh,
New Delhi

.....Applicants

(By Advocate: Shri K.B.S.Rajan)

Versus

1. Union of India
through
Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.

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2. The Chairman,
Railway Board,
Rail Bhawan, New Delhi

Respondents.

(By Advocate Shri R.C. Nangia)

ORDER

Hon'ble Mr.S.K.Malhotra

This OA has been filed by the applicants who are working as Draftsmen in Railway Board with the request that they may be given the same replacement scale of pay of Rs.5000-8000 as allowed to Draftsmen Grade II of the Zonal Railways as per the 5th Central Pay Commission 's recommendations instead of Rs.4500-7000 with all consequential benefits.

2. The applicants belong to drawing staff category working in the Railway Board and their pay scale right from the inception till the 4th Central Pay Commission (CPC) has been at par with their counter-parts in the Zonal Railways as well as CPWD draftsmen. However, after the 5th CPC recommendations, they have been granted pay scale of Rs.4500-7000, whereas the draftsman Grade II in the Zonal Railways have been allowed pay scale of Rs.5000-8000. They filed an OA No.855/2000 for allowing parity of scale but the OA was dismissed by the Tribunal. Later, they filed a review petition which was also dismissed. They filed a writ petition in the Hon'ble High Court of Delhi who remanded the matter to the Tribunal to consider the RA filed on the limited question of revision of pay scale at Rs.5000-8000 instead of Rs.4500-7000. The Tribunal reconsidered the RA and directed the respondents to consider the claim of the applicants by constitution of an Anomalies Committee. The Anomaly Committee was constituted

which considered the matter, after giving due opportunity to the representative of the applicants to present their case. The recommendations of the Anomaly Committee were considered by the respondents but they have rejected the claim of the applicants against which they have filed the present OA.

3. It has been contended by the applicants that they have been working as Draftsmen in the pay scale of Rs.1400-2300 since 1994. This post is filled 100% by promotion from the feeder grade draftsman Grade "B". However, in the Zonal Railways, 80% posts in Draftsman Grade-II are filled up by promotion and 20% by Direct recruitment. The minimum qualification for feeder grade in both these posts is the same i.e. Matriculation and certificate/diploma in Draftsmanship. Their pay scale was comparable to the draftsman Grade II of Zonal Railways till 4th CPC but disparity arose after the implementation of the 5th CPC whereby the draftsman Grade II of Zonal Railways were given the replacement scale of Rs.5000-8000, whereas they were given the scale of Rs.4500-7000. This disparity was required to be examined by the Anomaly Committee,, taking into consideration the relevant provisions of law, rules and instructions, including mode of recruitment, nature of duties and responsibilities etc. but even the Committee has not dealt with the matter in its proper perspective.

4. The respondents have filed their written reply that as directed by the Tribunal, the matter has been considered by the Anomaly Committee in details, taking into consideration all the relevant aspects and giving opportunity to the representative of the applicants to present their case. The respondent Department have considered the recommendations of the Anomaly Committee and the order dated 21.5.2003 (Annexure-



A1) has been passed after due deliberations. According to them, the pay scales granted to both categories of draftsmen are based on the recommendations of the 5th CPC. In the report, the Railway Board and Zonal Railways have been separately dealt with. In respect of draftsman in the Zonal Railways, a higher replacement scale of Rs.1600-2600(revised scale of Rs.5000-8000) has been recommended with direct recruitment qualification of Matric or 10+2+Diploma in Engineering of equivalent. However, there is no element of direct recruitment in the case of Railway Board drawing staff in this category. In the case of Railway Board drawing staff, direct recruitment is made only at the level of Grade "B" in the pay scale of Rs.1200-2040 with qualification of diploma in draftsmanship, whereas the recruitment qualification for entry grade of Rs.1400-2300 in Zonal Railways is diploma in Engineering discipline which is distinct and superior, being of 3 years' duration, to diploma in draftsmanship, which is of 2 years' duration. This fact cannot be ignored while drawing a parallel between Railway Board and Zonal Railway's draftsmen. It has also been contended that from the duties and responsibilities assigned to these categories of staff (Annexure R-5), it will be observed that hardly any original work relating to drawing/design gets done in the drawing office of Railway Board. This cadre is now a diminishing one and no further recruitment is being made at the entry level. Original designs are made by the field units in the Zonal Railways. According to them, the draftsmen in Railway Board do not require any technical knowledge and skill. With the introduction of automation of work with computer, the staff in the Board is mainly performing the secretariat work, viz. preparation of statements and monitoring the progress on Zonal Railways. Keeping in

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view these factors, the applicants have been given the normal replacement scale of Rs.4500-7000 in place of their earlier scale of Rs.1400 -2300. This is in accordance with the recommendations made in para 83.296 of the 5th CPC Report (Annexure R-6) to the effect that "All posts in the organization under the Ministry other than those specifically discussed by us in that Chapter are in standard scales of pay and they may be placed in the corresponding replacement scales of pay recommended by us." Applicants have filed a rejoinder also.

5. We have heard both the learned counsel at length and have also gone through the pleadings.

6. The main arguments advanced by the learned counsel for the applicants was that till the 4th CPC, the pay scales of the draftsmen (DI) both in Railway Board and Zonal Railways were the same. There is no reason for making any deviation, based on the recommendations in the 5th CPC. Besides, the qualification at the entry level in respect of both the posts is the same i.e. Matriculation plus diploma in draftsmanship. After getting promotion as DM Grade "A"/Grade II in Railway Board or Zonal Railways, their basic qualification does not undergo any change. The direct recruitment is only at the level of DM Grade-II in Zonal Railways to the extent of 20% for whom the qualification of diploma in Engineering has been prescribed. Their case cannot be compared with the direct recruits. They can be compared only with the promotee DM Grade-II in Zonal Railways with whom they are seeking parity of pay scales, on the main ground that the entry level qualification for both the cadres is the same. The denial of the same pay scales to the applicants is highly discriminatory, especially when both

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categories were drawing the same scale earlier. This aspect of the matter has not been dealt with by the Anomaly Committee in the right perspective. He also refuted the contention of the respondents that the draftsmen in the Railway Board are performing the duties of secretariat staff and they are not engaged in any technical work relating to making of original designs etc. On the other hand, they are supposed to have better expertise and knowledge to supervise the work of the field staff in Zonal Railways.

7. There is no doubt that the 5th CPC in its report in para 83.177 have specifically recommended the replacement scale of Rs.1600-2660 in the case of Sr.Draftsmen. This para comes under the discussions in respect of the employees of the Zonal Railways, under the heading "Zonal Railway Management" starting with para 83.65. Railway Board has been discussed separately in para 83.7 onwards. It would, therefore, not be incorrect to presume that the recommendations made in para 83.177 pertain to Zonal Railways and not to Railway Board employees. The DM working in Railway Board will thus be covered by the recommendations contained in para 83.296 according to which corresponding replacement scales of pay are admissible to those employees which have not been specifically discussed in the report. While it is a fact that the qualification in respect of DMs both in Railway Board and Zonal Railways at the entry level is the same but at the promotional post, there is an element of direct recruitment to the extent of 20% in case of Zonal Railways, which is missing in case of Railway Board. But more important is the duties and responsibilities assigned to these two categories of staff which are quite distinct as would be evident from the statement at Annexure R-5. While the Draftsman Grade "A" in Railway Board is engaged in the work relating to photocopying, maintenance of energy consumption register, maintaining of monthly statements, performance charts etc.. the duties and responsibilities of those working in Zonal Railways include tracing of loco, C&W drawing, carrying out alterations in drawings, preparations and updating of Track diagram, checking of building, structural plans etc. Certainly the work involved in case of DM in Zonal Railways is of technical . and

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of more onerous nature. All these aspects must have been taken into consideration by the 5th CPC while recommending a higher scale in case of DM in Zonal Railways. The Anomaly Committee which was set up at the instance of the Tribunal has also examined this as well as other related aspects before finalizing its recommendations. We do not find any hostile discrimination meted out to the applicants. A conscious decision has been taken by the respondents in allowing two different pay scales to these two categories of staff, after taking into consideration all the relevant factors, including the duties and responsibilities and based on the specific recommendations made by the 5th CPC.

8. It may not be out of place to mention that it is not the function of the Tribunal/Courts to determine the pay scales of a particular category of staff, based on parity with another set of employees. Such a task is best left to the expert bodies like Pay Commission. In this connection, we are relying on the judgment of the Hon'ble Supreme Court in the case of **State of Haryana Vs Haryana Civil Secretariat Personal Staff Association** (AIR 2002 S.C. 2589) in which it was held that fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for executive to discharge. Ordinarily the courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. In another case **UOI and Anr. Vs P.V. Hariharan and Anr** (1997) 3 SCC 568, the Hon'ble Supreme Court held that unless there is a clear case of hostile discrimination, there can be no judicial interference into the recommendations of Pay Commission. Further, the fixation of pay scale is the function of the Govt. and not of Administrative Tribunals and, therefore, the administrative Tribunal should not interfere with the pay scales without proper reasons and without being conscious of the fact that fixation of pay was not their function. Similar observations were made by the Hon'ble Supreme Court in the case of **Union of India and Others Vs. Pradip Kumar Dey** on the question of pay parity to the effect that in the absence of material relating to other comparable employees as to the qualification, method of recruitment, degree of scheme, experience involved in performance of the job, training required, responsibilities undertaken and other facilities in addition to pay scales, court cannot order grant ^{of} relief. On the question. of equal pay for equal work, it was held

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that it was for the administration to consider such matters and court should leave it to the wisdom of administration (JT 2000 (Suppl.2) SC 449). Besides, tinkering with the pay scales of a particular set of employees will have a cascading effect on similarly placed employees in other departments and will also disturb the relativity of pay scales of other cadres, which cannot be adjudicated upon by the Tribunal. Such matters should, therefore, be left to be decided by Pay Commissions, which take into consideration all the relevant factors, including relativities of pay scales with other cadres, before finalizing their recommendations. Anomaly, if any, can be taken care of by Anomaly Committees. In the instance case, both the Pay Commission as well as Anomaly Committee have considered the proposal. The respondents have passed a well reasoned speaking order, after considering the recommendations of both CPC and Anomaly Committee. Considering the facts and circumstances of the case, we also do not find any hostile discrimination in the treatment meted out to the applicants. We are inclined to agree with the decision of the respondents and do not find any justifiable reason to interfere in the matter, taking into consideration the rulings given by the Hon'ble Supreme Court in the case cited above.

9. As a result, the OA is considered to be without any merit and the same is dismissed, without any order as to costs.

S.K. Malhotra
 (S.K. Malhotra) 28/12/04
 Member (A)

M.A. Khan
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 Vice Chairman(J)

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