

10

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3026/2003

New Delhi, this the 20th day of September, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

1. Akhil Bhartiya Operational Staff
Association (Regisgered) (ABOSA)
Directorate of Co-ordination
Police Wireless
Ministry of Home Affairs
Block-9, C.G.O. Complex
Lodhi Road
New Delhi - 110 003.
2. Through its General Secretary
Shri P.Suresh Babu
Wireless Operator
Directorate of Co-ordination
Police Wireless
Ministry of Home Affairs
Block-9, C.G.O. Complex
Lodhi Road
New Delhi - 110 003.
3. Shri Ashish Kumar
Wireless Operator
President (ABOSA)
Directorate of Co-ordination
Police Wireless
Ministry of Home Affairs
Block-9, C.G.O. Complex
Lodhi Road
New Delhi - 110 003.
4. Shri Ran Singh
Wireless Operator
Directorate of Co-ordination
Police Wireless
Ministry of Home Affairs
Block-9, C.G.O. Complex
Lodhi Road, New Delhi-110 003.
5. Shri M.M.Shukla
Wireless Operator
Directorate of Co-ordination
Police Wireless
Ministry of Home Affairs
Block-9, C.G.O. Complex
Lodhi Road, New Delhi-110 003.
6. Shri H.S.Bhatti
Wireless Supervisor
Directorate of Co-ordination
Police Wireless
Ministry of Home Affairs
Block-9, C.G.O. Complex
Lodhi Road, New Delhi-110 003.
7. Shri Manbir Singh
Technical Assistant
Directorate of Co-ordination

Police Wireless
Ministry of Home Affairs
Block-9, C.G.O. Complex
Lodhi Road, New Delhi-110 003.

8. Shri Mahipal Singh
Senior Supervising Officer
Directorate of Co-ordination
Police Wireless
Ministry of Home Affairs
Block-9, C.G.O. Complex
Lodhi Road, New Delhi-110 003. ... Applicants

(By Advocate: Ms. Prashanti Prasad)

Versus

The Union of India through:

1. The Secretary
Ministry of Home Affairs
Government of India
North Block
New Delhi.
2. Director Police Telecommunications
Directorate of Co-ordination
Police Wireless
Ministry of Home Affairs
Block-9, C.G.O. Complex
Lodhi Road,
New Delhi-110 003.
3. The Secretary
Ministry of Finance
North Block
New Delhi. ... Respondents

(By Advocate: Sh. M.M.Sudan)

O R D E R

Justice V.S. Aggarwal:-

The Directorate of Coordination, Police Wireless came into existence in the year 1946. It is basically entrusted to deal with the Wireless Messages of the Government of India of Law and Order nature through its communication network of Inter State Police Wireless Stations situated in all the State Capitals and Union Territories. There are various Wings in this office. In Operational Wing, the entry grade service is Wireless Operator. The next promotional grades are of Technical Assistant, Wireless Supervisor, Senior Supervising Officer and

Aggarwal

Extra Assistant Director. In the Technical Wing, the entry grade service is Radio Technician and the next promotional grades are Technical Assistant (Maintenance)/Technical Assistant, Senior Technical Assistant and Extra Assistant Director.

2. The Fifth Central Pay Commission did not give any specific recommendations about any Group B, C or D posts in the office of Directorate of Coordination Police Wireless. Their pay scales had been replaced as per the standard pay scales defined by the Fifth Central Pay Commission. Aggrieved by the same, the staff members of Respondent No.2 had preferred certain representations. It had been decided to take up the matter with the Ministry of Finance, Implementation Cell. Some Diploma Holder Radio Technicians of the office of Respondent No.2 even filed OAs No.1003, 1004, 1005 and 1007 of 2000 seeking pay scale of Rs.5000-8000 as recommended by the Fifth Central Pay Commission for Diploma Holders. This Tribunal on 8.11.2000, ordered that the Diploma Holder Radio Technicians shall be allowed the pay scale of Rs.5000-8000 from 1.1.1996. A Writ Petition No.4033/2001 is pending against the order of this Tribunal.

3. In January, 2002, Ministry of Finance, Implementation Cell while examining the proposal for revision of pay scales alleged by Respondent No.2, restructured the pay scales of the Operational and Technical Wings and allowed the following pay scales:

"In pursuance to Ministry of Finance approval for restructuring of Group 'B' and 'C' posts in the Operational and Technical Wings of Directorate of



3

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Coordination, Police Wireless, the under mentioned posts are placed in the following pay scales with immediate effect:-

"Operational Wing		Technical Wing	
Post	Pay Scale (Rs.)	Post	Pay Scale (Rs.)
Wireless Operator	5000-8000 (4000-6000)	Radio Technician	5000-8000 (4500-7000)
Wireless Supervisor	5500-9000 (4500-7000)	Technical Asstt/ Technical Asstt(Maint)	5500-9000 (4500-7000)
Senior Supervising Officer	5500-9000 (5500-9000)	Senior Technical Assistant	5500-9000 (5500-9000)

Note: The figures in brackets indicate existing pay scales."

This issues with the approval of MHA and IFD vide their Dy. No.38/Fin.IV/02 dated 8.1.2002.

Sd/-
(Sher Singh)
Dy. Director (Admn.)"

4. After the publication of the above said pay scales, the Senior Supervising Officers and Senior Technical Assistants represented against the merging of the pay scales of their feeder cadres, i.e., Wireless Supervisor, Technical Assistant and Technical Assistant (Maintenance) with them. The matter was again taken up with the Ministry of Finance, Implementation Cell who on 8.4.2003, had passed the following order:

"OFFICE ORDER

In pursuance to Ministry of Finance approval for upgradation of the pay scale of the post of Senior Supervising Officer/Senior Technical Assistant and Extra Assistant Director of Directorate of Coordination Police Wireless, posts are placed in the following pay scales with immediate effect:-

S.No.	Name of the post	Existing pay scale	Revised pay scale
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19
-5-

1.	Extra Assistant Director	6500-10500	7500-12000
2.	Senior Technical Assistant	5500-9000	6500-10500
3.	Senior Supervising Officer	5500-9000	6500-10500

2. This issues with the concurrence of MHA/IFD vide their Dy. No.F.77/FA(H) 03 dated 7.4.2003.

Sd/-

((Sher Singh)

Deputy Director (Admn)

No.A 13012/2(CAT-STA/SSO)/2002-Ad II dated 8th April, 2003."

5. The precise grievance of the applicants is that the orders have been made effective prospectively. This was a revision of pay scale and on basis of upgradation as in other cases, the applicants should be given benefit from 1.1.1996. Therefore, the applicants pray that the impugned orders should be made applicable from 1.1.1996 at par with similarly situated other Government servants.

6. Needless to state that application has been contested. The contest is primarily on the ground that it is not awarding the benefit in pursuance of the Fifth Central Pay Commission but there has been restructuring of the cadre/grade and therefore, the applicants cannot claim the benefit from 1.1.1996.

7. Some of the facts which are not in dispute are that almost in all cases, pay scales after Fifth Central Pay Commission had been accorded to Government servant from 1.1.1996. It is also not in dispute that in fact it is admitted that Fifth Central Pay Commission while making recommendations, did not deal with Group 'B', 'C' and 'D' officers of Respondent

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No.2. It is in this backdrop that the applicants contend that they are entitled to the scales that have been awarded from 1.1.1996 and not prospectively.

8. In the impugned order of 10.1.2002, the respondents have recorded that the approval of the Ministry of Finance has been received for restructuring of Group 'B' 'C' and 'D' but merely stating that it is restructuring, will not be a sole factor. This Tribunal would enforce the doctrine of lifting the veil which clearly implies that wherever there appears the smoke-screen, the Court/Tribunal would tear off the mask and see the real face of the transaction.

9. Restructuring, in ordinary parlance, would mean in relation to the organisational and functional set-up including opening or closing of units or offices; revision of the organisational and functional set up; declaration of staff required; integration of posts, fixation of seniority and pay scales; integration of required personnel in the revised set-up & issuance of appointment orders in that behalf; declaration or demarcation of duties & responsibilities attendant to posts; declaration of posts equivalent to one another &; any other matters that may be necessary or incidental to meet the organisational or functional needs. Our attention has not been drawn in this regard. In fact the following extract of the Ministry of Finance's clarification clinches the issue. It reads:

"The Fifth Central Pay Commission had not made any specific recommendation with regard to upgradation



46
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of pay scales of the post of the petitioners. The issue was subsequently considered by the Government and appropriate upgraded pay scales were allowed in their case from a prospective date based on a proposal received from the administrative ministry with regard to cadre re-structuring of these posts. As no specific recommendation was made by the Fifth Central Commission in the instant case and cadre restructuring was involved, the upgraded pay scales could be granted to the concerned posts with prospective effect only in accordance with the provisions of the CCS (RP) Rules, 1997. As such no arbitrary discrimination has been made by the Government whatsoever alleged by the petitioners in the instant OA."

It clearly shows that it is basically an upgradation of the pay. Keeping in view the fact that Fifth Central Pay Commission had not made any specific recommendation, there was an urgent need to revise their pay scales. Necessarily it is a revision in pursuance of the Fifth Central Pay Commission as the anomaly had to be removed. The contention that there was restructuring, has to be stated to be rejected.

10. Learned counsel for the respondents had drawn our attention to a decision of the Supreme Court in the case of P.U. JOSHI AND OTHERS v. ACCOUNTANT GENERAL, AHMEDABAD AND OTHERS, (2003) 2 SCC 632. The Supreme Court held that questions relating to the Constitution, pattern, nomenclature of posts, cadres, etc fall within the domain of the State. It is a policy matter. The findings of the Supreme Court are:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and

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17
- 8 -

jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."


11. We do not dispute the said proposition. However, it is indeed for the Tribunal to see the date from which the scales have been given or it has arbitrarily been fixed or not. Arbitrariness is a sworn enemies of reasonableness. When all other employees have been given the benefit from 1.1.1996 after Fifth Central Pay Commission's report was received, we find no reason why this benefit could not be accorded to the applicants. They cannot be discriminated.




18

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12. For these reasons, we allow the present application and direct that the benefit of the scales mentioned in the impugned orders of 10.1.2002 and 8.4.2003 should be accorded to the applicants from 1.1.1996. Arrears should preferably be paid to them within four months from the date of receipt of a copy of this order.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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