

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3136/2003

New Delhi, this the 20/5 day of September, 2004

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

1. M.L. Bhandari
aged 58 years
s/o Late Shri Ravi Dutt Bhandari
r/o 373, Sector 7A,
Faridabad
Haryana.
2. A.K.Mehrotra
aged 60 years,
s/o Late Shri K.N. Mehrotra
r/o 877, Laxmibai Nagar
New Delhi.
3. S.K. Arora
aged 58 years
s/o Shri U.C.Arora
r/o 84, Chandrollok Enclave
Pitam Pura
New Delhi.
4. R.K.Gambhir
aged 60 years
s/o Late Shri T.D.Gambhir
r/o 258, Sector 8, R.K.Puram
New Delhi.
5. Y.K.Prasad
aged 58 years
s/o Late Shri Shyam Prasad
r/o IV/125, North West Moti Bagh
New Delhi. .. Applicants

(By Advocate: Sh. G.S.Chaman)

Versus

1. Union of India through
the Secretary
Min. of Home Affairs
Govt. of India
Central Sectt, North Block
New Delhi.
2. Director,
Intelligence Bureau, (MHA)
Govt. of India
No.35, New Complex
Sardar Patel Marg
New Delhi.
3. Secretary
Ministry of Personnel, PG and Pensions
Dept of Personnel & Training
Govt. of India
Central Sectt., North Block
New Delhi. ... Respondents

(By Advocate: Sh. S.M.Arif)

O R D E R

Justice V.S. Aggarwal:-

The applicants are working as Deputy Central Intelligence Officer (Tech.) (for short 'DCIO'). It is a Grade 'A' service under Director, Intelligence Bureau. They had joined in the Intelligence Bureau as Assistant Central Intelligence Officer II (Tech./WT). It is a Group 'C' Service.

2. By virtue of the present application, they seek parity by extending the benefit of Senior Time Scale of pay Rs.10,000-15200 as has been granted to their counterparts working as Assistant Commandants in the Central Paramilitary Force (for short 'CPMF').

3. Some of the relevant facts can conveniently be delineated to precipitate the question in controversy. The Fourth Central Pay Commission in its report at Para 10.255 opined that there were five Central Police Organisations under the Ministry of Home Affairs, namely, the Border Security Force (BSF); Indo-Tibetan Border Police (ITBP); Assam Rifles (AR); Central Reserve Police Force ((CRPF) and Central Industrial Security Force (CISF). There were two similar organisations, namely, Cost Guard (CG) and Railway Protection Force (RPF) under the Ministry of Defence and Ministry of Transport, respectively. The said Fourth Central Pay Commission had suggested that there should be uniformity in the pay scales of Central Police Organisations. The Fourth Central Pay Commission further recommended that pay scales of the posts in the Central Bureau of Investigation should be

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comparable with the Central Police Organisations and it should apply to the Central Bureau of Investigation. Initially, the Government did not accept the Central Pay Commission's recommendations in the case of Deputy Superintendent of Police in Central Bureau of Investigation and for maintaining parity between Deputy Superintendent of Police, CBI and Deputy Central Intelligence Officer, Intelligence Bureau. Later on, vide OM of 8.2.1996, the scale of Rs.2200-4000 was granted to Deputy Superintendent of Police, CBI at par with their counter parts in BSF, CRPF, etc. However, the DCIOs in IB were left and deprived of the scale of Rs.2000-3500. When upgradation of the pay scale of Deputy Superintendent of Police in CBI was done, some officers of Respondent No.2 had filed Original Application in the Hyderabad Bench of this Tribunal. The said Bench had directed to consider the applicaltion as representation and decide the matter.

4. Thereafter, the Fifth Central Pay Commission in Para 70.54 recommended that the Deputy Central Intelligence Officer may be given the scale of Rs.2200-4000. In future, 25% of the said posts of DCIO may be filled by direct recruitment. It is relevant to mention that these are at present being filled by promotion and deputation.

5. The Government accepted the recommendations of the Fifth Central Pay Commission and upgraded the scale of DCIO in IB to Rs.2200-4000 of which the revised scale is Rs.8000-13500 from 1.1.1996. Thereafter, the DCIO (MT), DCIO (Cipher)

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and DCIO (Computer) were also given the same scale. However, the DCIO counter parts in the Technical/WT Wing of the Intelligence Bureau who were in the same pre-revised scale of Rs.2000-3500 as DCIO were left out of this parity in the pay scale because they were designated as Assistant Technical Officer instead of Deputy Central Intelligence Officer. The Fifth Central Pay Commission had ignored their claim.

6. Aggrieved by the denial of the scale at par with DCIO, IB and Assistant Commandant in other CPOs, OA 2446/98 was filed before this Tribunal. During the pendency of the same, an order of 5.2.2001 was issued and this Tribunal on 19.2.2001, keeping in view the relief that had been granted, disposed of the application holding:

"2. Shri S.M. Arif has filed a copy of order dated 5.2.2001 issued by the respondents regarding upgradation of pay scale of Technical Cadre of IB at par with the Executive Cadre of IB. Shri Chaman, learned counsel of the applicants states that vide order dated 5.2.2001 the relief sought by the applicants for upward revision of their scale w.e.f. 1.1.96 has been accorded by the respondents. He only prayed that the respondents be directed to implement the order dated 5.2.2001 within a time limit. The respondents are directed to implement the order dated 5.2.2001 regarding upgradation of pay scale of the applicants within a period of three months from the date of communication of these orders."

7. More recently, a fresh grievance which is under the gaze of this Tribunal, start from the day the Government of India issued orders dated 9.4.2001 and sanctioned Senior Time Scale of pay of Rs.10000-15200 to Group 'A' Officers in the Central Paramilitary Force after six years of regular service in the grade of Rs.8000-13500 which was later on

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reduced to four years vide letter dated 6.5.2002. The said benefit was extended to the Assistant Commandant of SSB. The grant of non-Functional Senior Time Scale was limited to CPO which is now called as Central Protection Paramilitary Force (CPMF).

8. The applicants claim that they are entitled to the same scale and their plea is that reason for rejecting their claim on parity of scale which has been granted to the other Central Police Organisations, is not sustainable. Hence, the present application has been filed.

9. The application has been contested. Respondents contend that Intelligence Bureau is a deputation oriented organisation and personnel are mainly drawn from various Police Forces having a distinct identity. According to the respondents, Fourth Central Pay Commission did not make any specific recommendation for Intelligence Bureau. The post of Assistant Commandant/Dy. Superintendent of Police is a direct entry level post in all the five Central Police Organisations. The Fourth Central Pay Commission did not make recommendations pertaining to the posts in Intelligence Bureau but made a passing reference for the CBI. Fifth Central Pay Commission granted parity to Deputy Central Intelligence Officers in Intelligence Bureau and gave them the scale of Rs.2200-4000 with a stipulation that 25% of the posts should be filled by direct recruitment. However, Assistant Technical Officers who are at par with DCIOs in Intelligence Bureau, were not extended the said benefit.

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10. So far as non-functional Senior Time Scale is concerned, it has also been allowed to Assistant Commandants in the CPMFs with a view to remove acute stagnation. Promotions are made according to availability of posts in a particular rank and structure. To obviate the stagnation, non-functional Senior Time Scale has been introduced in the said Armed Forces.

11. On these broad facts, the application has been contested. The claim of the applicants vide impugned order, has been rejected, on 29.4.2003. The operative part of the same reads:

"3. AND WHEREAS, the dispensation of the Senior Time Scale has been given only to

(i) the officers of the Combatised Forces in the CPMFs, where there is a rigid command structure;

(ii) the officers of Uniformed Forces who hold ranks and wear badges;

(iii) where there is a direct recruitment at the level of Assistant Commandant in these Combatised Forces; and

(iv) where the possibility of increasing the number of posts at higher levels in these Forces being rather bleak.

4. NOW THEREFORE, the competent authority, after careful consideration of his request, is pleased to reject his claim as neither the IB officers wear uniform nor IB is a Combatised Force. Further more, no direct recruitment has so far been made at the level of DCIO in IB and there are promotional avenues available to the DCIOs in IB beyond this level. Therefore, the case for grant of Senior Time Scale to DCIOs in IB on the pattern of similar benefit extended to the Assistant Commandants in the CPMFs cannot be agreed to."

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12. Learned counsel for the applicants urged that earlier there was some disparity in the pay scales of Deputy Central Intelligence Officers (Technical) and thereupon they were granted the scale of Rs.8000-13500. To that extent, the disparity according to him was removed but his grievance is that after two months, another order had been issued dated 9.4.2001 granting the Senior Time Scale of Rs.10000-15200 to all Group 'A' officers in Central Paramilitary Force after six years of service which has been reduced to four years service vide order of 6.5.2002. The applicants contend that they are entitled to parity that had been restored and in this regard, Articles 14 and 16 have been violated.

13. The principle of law is well settled on equal pay for equal work. This is not a fundamental right but is a constitutional goal. The Central Pay Commission had recommended that the Deputy Central Intelligence Officers may be given the scale of Rs.2200-4000 but in future 25 % of the posts may be filled by direct recruitment. As yet, the direct recruitment has not come into being and therefore, it has rightly been pointed that the said part of the report of the Central Pay Commission has not been implemented.

14. Otherwise also, merely because if there was parity of pay scales always restored and subsequently some additional benefit has been given to certain other Paramilitary Forces, is no ground that the applicants may also be granted the same. The Supreme Court has, more often than once, held that

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this is a fact which falls within the domain of the Expert Body and unless there is hostile discrimination, the Court/Tribunal should not interfere. The quality of work performed by different sets of persons holding different jobs will have to be evaluated. This was highlighted by the Supreme Court in the case of STATE OF HARYANA & OTHERS v. JASMER SINGH & ORS., JT 1996 (10) SC 876. In the cited case, persons working on daily wages were granted the same scales with those holding regular posts on principle of 'equal pay for equal work'. The decision of the Punjab and Haryana Court was set aside and it was held:

"8. It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay-scale must be left to expert bodies and, unless there are any male fides, its evaluation should be accepted."

15. Similarly, in the case of SHYAM BABU VERMA AND OTHERS v. UNION OF INDIA AND OTHERS, (1994) 2 SCC 521, the Supreme Court held that the nature of work may be more or less the same but scale of pay may

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vary based on academic qualification or experience which justifies classification. The findings of the Supreme Court are:

"The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them. The principle of 'equal pay for equal work' has been examined in State of M.P. v. Pramod Bhartiya [(1993) 1 SCC 539] by this Court. Before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary. Then only it can be held that there has been a discrimination, within the meaning of Article 14 of the Constitution."

16. In the case of UNION OF INDIA AND OTHERS

v. PRADIP KUMAR DEY, 2001 SCC (L&S) 56, the Supreme Court held that for applying the principle of 'equal pay for equal work', there should be sufficient material before the Court for comparison. In absence of the same, the Court should not interfere and the petition as such could not have been so allowed. It was reiterated that it was the function of the Government which normally acts on the recommendations of the Pay Commission. Change of pay scale of a category has a cascading effect.

17. Similarly, in the case of STATE BANK OF INDIA & ANR. v. M.R. GANESH BABU & ORS., JT 2002 (4) SC 129, the Supreme Court held that functions may

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be same but responsibilities make a difference. One cannot deny that often the difference is a matter of degree. The Supreme Court held:

"16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principal has been adequately explained and crystallised and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgement 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, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgement of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court."

18. More recently in the case of UNION OF INDIA v. TARIT RANJAN DAS, 2004 (1) SCSLJ 47, the Supreme Court held that where Pay Commission had already taken care and considered the question, there was no question of any equivalence. The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and

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physical requirements, disagreeableness of the task, hazard attendant of work and fatigue involved are some of the factors, which cannot be lost sight of.

19. In fact, at this stage, we deem it necessary to refer to other decisions of the Supreme Court wherein earlier though there was pay parity which was disturbed, the Supreme Court held that the question of interference would not arise. In the case of SHER SINGH & ORS. v. UNION OF INDIA & ORS., JT 1995 (8) SC 323, it held that Courts should not interfere in matters of Govt. policy except where it is unfair, mala fide or contrary to law. From the facts, it appears that earlier there was pay parity to the library staff with the teaching staff. The University appointed a Committee. It recommended continuance of the pay parity. The library staff found that their pay parity had been disturbed and the teaching staff was given benefit from retrospective date. The same question of 'equal pay for equal work' came into consideration. The Supreme Court held that in such matters, the Courts will not interfere.

20. More close to the facts of the present case is the decision of the Supreme Court in the case of STATE OF HARYANA & ANR. v. HARYANA CIVIL SECRETARIAT PERSONAL STAFF ASSOCIATION, JT 2002 (5) SC 189. In the cited case, prior to 1986, the PAs in the Civil Secretariat, Haryana were enjoying higher pay scale than PAs in the Central Secretariat. When the Fourth Central Pay Commission gave its report, the scales of the PAs was revised to Rs.2000-3500 from 1.1.1986. The Haryana Government had accepted the

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recommendations but in regard to the PAs in the Civil Secretariat, the revision was made to the Rs.1640-2900 with some special pay. Their grievance was that parity of the pay scale with their counterparts in the Central Government had been disturbed. The Punjab and Haryana High Court had allowed the petition. The Supreme Court set aside the said order and held:

"8. While making copious reference to the principle of equal pay for equal work and equality in the matter of pay, the High Court overlooked the position that the parity sought by the petitioner in the case was with employees having only the same designation under the central government. Such comparison by a section of employees of state government with employees of central government based merely on designation of the posts was misconceived. The High Court also fell into error in assuming that the averment regarding similarity of duties and responsibilities made in the writ petition was unrebutted. The appellants in their counter affidavit have taken the specific stand that no comparison between the two sections of employees is possible since the qualifications prescribed for the P.As. in the central secretariat are different from the P.As in the state civil secretariat. Even assuming that there was no specific rebuttal of the averment in the writ petition that could not form the basis for grant of parity of scale of pay as claimed by the respondent. The High Court has not made any comparison of the nature of duties and responsibilities, the qualifications for recruitment to the posts of P.As in the state civil secretariat with those of P.As of the central secretariat."

21. From the aforesaid, it is clear that it is within the domain of the expert body to go into the said facts. The pay scale has to be granted keeping in view the nature of the duties, the degree of strain, experience involved, training required, responsibilities undertaken, mental and physical

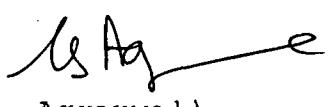
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requirement, etc. The duties of the Deputy Central Intelligence Officer, Intelligence Bureau are totally different from others in the Paramilitary Force.

22. We have already reproduced above the impugned order which clearly makes a distinction between the Paramilitary Forces and the applicants. The Paramilitary Forces are the Combatised Forces and there is a rigid command structure. It cannot therefore be stated that there has always to be parity in the pay scale. Thus, following the ratio deci dendi of the decision of the State of Haryana & Anr. v. Haryana Civil Secretariate Personnel Staff Association, JT 2002 (5) SC 189 it must be held that the applicants cannot claim it as of right that they are entitled to the same scale. We find at the risk of repetition to conclude that the duties of the Paramilitary Forces like stress, strain and danger are totally different from that of the applicants. There is thus a little ground to interfere.

23. For these reasons, Original Application being without merit must fail and is accordingly dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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