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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.3185/2003

This the 30 th day of August, 2005.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)**

1. All India Narcotics Executive Officers Association (an Association recognized vide Ministry's F.No. B-12017/95-ADIV-A dated 28.8.2001) through its General Secretary, D.Bhattacharya, 19, The Mall, Morar, Gwalior-474006, Madhya Pradesh and having its branch office at U-1, Green Park Extension, Yusuf Sarai, New Delhi.
2. S.S.Dewangan, working as Superintendent, Govt. Opium & Alkaloid Factories, 27, Saraswati House, 5th Floor, Nehru Place, New Delhi-110019.

... Applicants

(By Shri Pradeep Dahiya, Advocate)

Versus

1. Union of India through Revenue Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Joint Secretary (Revenue), Ministry of Finance, Department of Revenue, North Block, New Delhi.
3. Central Board of Excise & Customs through its Chairman, Ministry of Finance, Department of Revenue, North Block, New Delhi.
4. Joint Secretary (Administration), Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, North Block, New Delhi.
5. Secretary (Expenditure), Department of Expenditure, Ministry of Finance, North Block, New Delhi.

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6. Narcotics Commissioner,
Central Bureau of Narcotics,
19, The Mall, Morar,
Gwalior-476006 (MP). ... Respondents

(By Shri R.R.Bharti, Advocate)

ORDER

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Applicant No.1 is an association recognized vide Ministry's letter dated 28.8.2001, namely, All India Narcotics Executive Officers' Association (hereinafter referred to as the Association). Applicant No.2 is a member of the Association and is presently working as Superintendent with respondents.

2. By virtue of the present application, applicants have challenged Annexure P-1 dated 27.10.2003 whereby application of the applicant Association for grant of pay parity to the officers (Superintendents, Inspectors and Sub Inspectors) of Central Bureau of Narcotics (CBN) with similar posts in the Narcotics Control Bureau (NCB) and Central Police Organizations (CPOs) has been rejected. It is alleged on behalf of applicants that the impugned orders are non-reasoned.

3. The background of the present case, briefly stated, is as follows -

The Principal Bench of the Tribunal at New Delhi passed the following orders in OA No.887/2003 filed by the applicant Association:

"It is directed that Respondent No.1 (Union of India through Secretary (Revenue), Ministry of Finance, Department of Revenue, New Delhi) would consider the representation i.e. dated 23.04.2002 and pass appropriate orders preferably within six months from the date of receipt of a certified copy of the present order. The order so passed by the Respondents shall be communicated to the applicants. In case, Respondent No.1 is not competent to take a decision, he would forward the representation to the appropriate authority."



In pursuance of the Tribunal's directions, the representation of the Association dated 23.4.2002, on examination by respondents, has been rejected as stated above. Among other reasons, it has been stated in the impugned orders that the Fifth Central Pay Commission (CPC) had specifically held that posts of Inspector and Sub Inspector in CBN were not comparable with the posts in CBEC as their mode of recruitment/recruitment rules were different; the hierarchical structure of posts in NCB, CBEC and CBN is different since the post of Sub Inspector does not exist in NCB or CBEC; the main job of CBN is superintendence over the cultivation of opium in the country, its collection and export. As such, the job profile is not comparable with the duties attached to the post of Inspectors in CBEC or Intelligence Officers in NCB or with various other departments.

4. It has been averred that ~~the~~ while on the one hand the 4th CPC enhanced the pay of Inspectors, Central Excise and Customs by merging Rs.425-800 (OG) and Rs.550-900 (SG) and placed them in the scale of Rs.1640-2900, but by merging Rs.425-700 (OG) and Rs.550-900 (SG), the Inspectors in CBN were placed in the scale of Rs.1400-2300. According to applicants, this was a gross injustice meted out to the Inspectors of CBN. They filed OA No.311/1988 in the Jodhpur Bench of the Tribunal. Vide judgment dated 20.10.1993, the Jodhpur Bench considering that the source of recruitment of Inspectors of Income Tax, Central Excise and Customs and Narcotics is the same and since they had parity of pay scales prior to 1969, held that denying the same parity to Inspectors of CBN seemed to be discriminatory. The respondents were directed to consider the recommendations made by the Narcotics Commissioner in this behalf.

5. The learned counsel of applicants stated that the 5th CPC did not give proper weightage to the decision of the Jodhpur Bench; the applicant Association was not granted proper opportunity to explain their stand, and as such, they were meted out hostile discrimination amongst equivalent officers of CBN, NCB and Central Excise and Customs. As a result, the 5th CPC placed the Inspectors of

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CBN in an abnormal pay scale, i.e., Rs.5000-8000 instead of Rs.6500-10500 and the Superintendents of CBN were accorded the pay scale of Rs.6500-10500 vis-à-vis Rs.7500-12000 of the Superintendents of other enforcement agencies.

6. Drawing attention to paragraph 66.119 of the 5th CPC Report, the learned counsel of applicants pointed out that Inspectors of Central Excise and Customs were held not comparable with Inspectors of Police organizations and it was recommended, "in the context of our recommendation that the Inspectors of CBI and IB should be placed only in the replacement scale corresponding to Rs.1640-2900" instead of Rs.2000-3200. Similarly as per paragraph 66.120 relating to Superintendents of Central Excise, the demand for revision of pay scale of Superintendents of Central Excise from the existing Rs.2000-3500 to Rs.2375-3500 made by All India Federation of Central Excise and Customs Gazetted Officers was not conceded on the ground that it would disturb the "horizontal relativities". The learned counsel argued that the 5th CPC had recommended the scales Rs.5500-9000 and Rs.6500-10500 to maintain horizontal relativities for Inspectors and Superintendents of Central Excise and Customs and other like departments, but did not maintain horizontal relativities for Inspectors and Superintendents of CBN, who were placed in lower scales, i.e., Rs.5000-8000 and Rs.6500-10500 respectively.

7. The learned counsel pointed out that vide Annexure P-7 dated 27.8.1997, Chairman, CBEC had forwarded the brief containing demands of applicants and the departmental recommendations/comments thereon to Secretary, Department of Expenditure for placing them before the Fast Track Committee for its consideration. He further referred to Annexure P-19 dated 8.10.1999 which are recommendations of the Narcotics Commissioner addressed to the Department of Revenue on the alleged anomaly in the pay scales of CBN officers. The learned counsel particularly mentioned that the Department had accepted that there was an anomaly in the pay scales of Inspectors and Superintendents of CBN as

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recommended by the 5th CPC, which was dealt with in file No.A-26017/11/98-P/AD-II(A), but the matter was not considered at all either by the Fast Track Committee or the Departmental Anomaly Committee and the anomaly has continued.

8. In support of his contentions, the learned counsel relied on the following:

- (1) *Randhir Singh v Union of India*, (1982) 1 SCC 618;
- (2) *Secretary, Finance Department & Ors. v West Bengal Registration Service Association & Ors.*, 1993 Supp (1) SCC 153;
- (3) *Central Excise and Customs Non-Gazetted Officers' Association & Anr. v Union of India & Ors.*, (1987) 4 Administrative Tribunals Cases (ATC) 446 (CAT, Jodhpur); and
- (4) *All India Federation of Central Excise Executive Officers & Anr. v Union of India & Anr.* (CAT, Jabalpur order dated 22.3.2002 in IA No.45/2000).

Through these, the learned counsel basically contended that following the principle of equal pay for equal work, the Tribunal has jurisdiction to remove the disparity in pay scales if it has resulted in unconstitutional discrimination. As the principle of equal pay for equal work is implicit in doctrine of equality enshrined in Article 14 of the Constitution, non-grant of similar pay scale to the aggrieved is irrational. If there is unjust treatment by arbitrary State action or inaction in the matter of grant of pay scales, the courts can interfere.

9. The learned counsel of respondents, on the other hand, maintained that equation of posts and determination of pay scales is primary function of the Executive and not the Judiciary and, therefore, ordinarily courts should not interfere with the task of job evaluation, which is generally left to expert bodies, like the Pay Commissions. He stated that respondents have passed the impugned orders in pursuance of directions of the court. Respondents have given adequate reasons for rejecting applicants' claim for parity with NCB officers and other organizations. The learned counsel further stated that the job profile of the posts

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held by applicants is not comparable with the duties attached to the posts of Inspectors in Central Excise and Customs or Intelligence Officers in the NCB or with other departments. The main job of CBN is superintendence over the cultivation of opium in the country and as such, these jobs are not comparable with those in Central Excise and Customs, Intelligence Officers in NCB etc. Drawing attention to Annexure P-35 dated 29.4.2002, the learned counsel stated that the applicant Association had been informed on the basis of the 80th meeting of the Departmental Council of the Ministry of Finance held on 10th – 11th July, 2000 that no item relating to CBN was received from the leader, staff side for consideration by the Anomaly Committee set up by the department till the expiry of tenure of the Committee, i.e., up to 16.8.2000. As such, the applicant Association was advised to take up the matter with the Central Board of Excise and Customs (CBEC). The learned counsel further pointed out that the pay scales in question were fixed on the specific recommendations of the 5th CPC. As such, applicants' claims cannot be accepted.

10. Referring to paragraph 66.197 of the 5th CPC Report, which relates to the scale of pay of Inspectors (Narcotics), the learned counsel stated that though the Commission admitted that the Inspectors in the Bureau and those in the Central Excise and Customs are recruited through a common competitive examination conducted by the Staff Selection Commission based on similar educational qualifications and have similar duties, yet there is a major differential inasmuch as that whereas 75% of the sanctioned posts of Inspectors of Central Excise and Customs are filled by direct recruitment of graduates through the Staff Selection Commission, only one-third of the posts of Inspectors (Narcotics) are similarly filled, the remaining two-third of the posts being reserved for promotion of Sub Inspectors, who are only matriculates, and Upper Division Clerks and Stenographers. In these circumstances, the 5th CPC did not concede the demand for total parity in the posts of Inspectors (Narcotics) and Inspectors of Central



Excise and Customs. The Commission recommended that the posts of Inspectors (Narcotics) be placed in the replacement scale corresponding to the scale of Rs.1600-2660.

11. The learned counsel of respondents relying on *Union of India v Tarit Ranjan Das*, (2003) 11 SCC 658, contended that the burden of proof of equality lies on the employee who claims pay parity. The learned counsel stated that as in the case of *Tarit Ranjan Das*, in the instant case as well, the 5th CPC having regard to comparative functional requirements and other aspects had held that there was no question of any equivalence. He further relied on order dated 3.11.2002 in OA No.1247/2001 (CAT, Madras Bench) in *Central Excise Ministerial Officers Association, Coimbatore v Union of India*, to the effect that applicants having failed to present their case properly before the Pay Commission, it was unfair on their part now to say that the Pay Commission had come to a conclusion based on some irrational classification. Thus, the OA was dismissed being devoid of merit. The learned counsel stated that in the present case, the expert body, i.e., the 5th CPC, after considering all relevant factors had recommended specific scales to the officers of the applicant Association and that the Departmental Anomaly Committee had not accepted any anomaly in the scales of applicants.

12. We have considered the respective contentions of parties as also carefully perused the material on record.

13. Paragraph 66.197 of the 5th CPC Report reveals that the demand of parity in the scale of posts of Inspectors (Narcotics) and Inspectors of Central Excise and Customs was rejected by the Commission basically on one ground that whereas 75% of the sanctioned posts of Inspectors of Central Excise and Customs are filled by direct recruitment of graduates through the Staff Selection Commission, only one-third of the posts of Inspectors (Narcotics) are similarly

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filled, the remaining two-third of the posts being reserved for promotion of Sub Inspectors, who are only matriculates, and Upper Division Clerks and Stenographers. Various other factors such as recruitment through a common competitive examination, similar educational qualifications and comparable duties were, however, found in the case. The following paragraphs of Chapter 40 (Pay Determination : A Conceptual Frame) of the 5th CPC Report relating to equal pay for equal work are relevant in the instant case:

“40.13 As a principle, the ‘equal pay for equal work’ criterion has been used widely by the higher courts. Incidentally, it may be mentioned that the Canadian Human Rights Act has further amplified the concept to include “equal pay for equal work”. Theoretically, nothing can be said against it. In practice, it is extremely difficult to define what equal work is.

40.14 Job evaluation is a technique that has been practiced in some departments. The Expert Classification Committees of the Ministry of Defence are one example. We had also appointed inter-Departmental Committees for several common categories. Where the categories are nearly the same in terms of qualification, job description, designation, method of recruitment, promotion avenues, etc., there has been no difficulty and we have been able to suggest uniform scales of pay in model cadre structures for adoption by all the concerned departments. Wherever it was found that most of the parameters matched and one or two did not, we have suggested parity in pay scales subject to qualifications being upgraded or resort being had to direct recruitment.”

While on the one hand, in these paragraphs, the 5th CPC enunciated in respect of the principle of ‘equal pay for equal work’ and job evaluation that when most of the parameters matched and one or two did not, parity could be suggested in pay scales subject to upgradation of qualifications or resort being had to direct recruitment, but in the case of Inspectors (Narcotics), on the other hand, on the ground of one factor alone, the Commission had denied parity of scale with the Inspectors of Central Excise and Customs.

14. Annexure P-35 dated 29.4.2002 relating to 80th meeting of the Departmental council of the Ministry of Finance held on 10-11 July, 2000 indicates, “no item relating to CBN was received from the Leader, Staff Side for

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consideration by the Committee", while Annexure P-7 dated 27.8.1997 is request from Chairman, CBEC to Secretary, Department of Expenditure for placing the departmental recommendations/comments on the recommendations of the 5th CPC for consideration before the Fast Track Committee. Annexure P-19 dated 8.10.1999 are detailed recommendations of the Narcotics Commissioner submitted to the Department of Revenue for removal of anomaly in the pay scales of the CBN officers.

15. In *Tarit Ranjan Das* (supra) it has been held that the principle of equal pay for equal work cannot be applied merely on the basis of designation or nature of work. Other relevant factors also have to be taken into account, but the burden of proof of equality lies on the employee who claims pay parity. In the present case, not only that the applicant Association had submitted detailed representations to respondents, the same had been recommended by the Narcotics Commissioner as also the Chairman, CBEC. These recommendations were forwarded to the Department of Revenue for consideration by the Fast Track Committee. On behalf of applicants it has been averred that the demands for removal of anomaly in question were processed in file No. A-26017/11/98-P-ADII(A) by the Departmental Anomaly Committee. However, on the other hand, respondents have stated that applicants had not taken up their demands before the Departmental Anomaly Committee. Neither side has submitted proof regarding their contentions of placement before and consideration of the demands of applicants by the Departmental Anomaly Committee. In *Randhir Singh* (supra) it was held that the principle of equal pay for equal work is not an abstract doctrine but one of substance. In cases of unequal scales of pay based on no classification or irrational classification a breach of the principle is clearly made out. Irrational classification for according a lower scale of pay can certainly form a basis for interference by the courts even though an expert body had made the related recommendations. Following the ratio in *Randhir Singh* (supra), in *Central*

Excise & Customs Non-Gazetted Officers' Association (supra) it had been held that in matters like the present a narrow and pedantic approach should not be followed but the issue should be approached in liberal spirit. Discrimination between the inspectors of Income Tax on the one hand and those of Central Excise and Customs in that case was found to be tainted with arbitrariness. It was further held that the disparity in their pay scales was not based on any rational classification. The respondents were directed to grant parity of pay to the petitioners. In *Secretary, Finance Department v West Bengal Registration Service Association* (supra) it was held equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and court's interference is absolutely necessary to undo the injustice. Court has jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction.

16. The case law discussed above unequivocally holds that the Tribunal has jurisdiction to remove the disparity in pay scales if it has resulted in irrational discrimination. In the case of Inspectors (Narcotics), parity of pay scales with the Inspectors of Central Excise and Customs has been denied to them only on the basis of one factor although all other factors were accepted by the 5th CPC as being similar. The conceptual frame enunciated by the 5th CPC in paragraph 40.14 stated that when most of the parameters matched and one or two did not, parity in pay scales could be suggested subject to upgradation of qualifications/resort being had to direct recruitment, but it was not recommended by the 5th CPC in the applicants' case ultimately. In the earlier decision of the Jodhpur Bench of the Tribunal in OA No.311/1988, in a similar matter, the respondents were directed to take into consideration the recommendations made

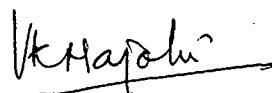
by the Narcotics Commissioner for allowing Inspectors (Narcotics) pay parity with the Inspectors of Income Tax and Central Excise and Customs.

17. If one has regard to the above analysis of facts and law, the present is a case in which in the case of Inspectors (Narcotics) the 5th CPC had denied parity to them with other similarly situate Inspectors merely on the basis of one factor; the recommendations of the Narcotics Commissioner and the Chairman, CBEC were not considered in detail, the demands of applicants in regard to disparity of pay scales were not considered by the Fast Track Committee. It could also not be ascertained whether the Departmental Anomaly Committee considered the demands in question. Here is a fit case in which though we are not ourselves interfering to adjudicate the issues, in the interest of justice find it necessary to direct respondents to reconsider the matter in the following terms:

- i) Impugned orders dated 27.10.2003 are quashed and set aside.
- ii) Present OA shall be considered as a representation to respondents.
- iii) Respondents shall constitute a Committee comprising Joint Secretaries of the Department of Expenditure, the Department of Personnel and Training and the Department of Revenue, who shall afford a hearing to a group of five members of the applicant Association, and make its recommendations on the claims made in the OA. These recommendations shall be made within three months of the communication of these orders.
- iv) The Department of Revenue/competent authority shall pass orders on the claims of applicants within a period of one month from the date of submission of the report of the above Committee.

18. The OA stands disposed of in the above terms.


(Meera Chhibber)
Member (J)


(V. K. Majotra) 30.8.05
Vice-Chairman (A)

/as/