

IN THE HIGH COURT OF DELHI AT NEW DELHI

+WP(C) No.13226/2005

Date of Decision: 04.07.2008

#Kishan Chand Sharma & Others
!

....Petitioner
Through: Mr.Sudarshan Rajan

Versus

\$Union of India & Another
^

.....Respondents
Through Mr.R.C. Nangia

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA**

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

1. The petitioners herein are working as Draftsmen Grade 'A' in the Railway Board and were given the replacement scale of Rs.4500-7000 on the implementation of the Fifth Central Pay Commission (in short '5th CPC'). Their counterparts, i.e., Draftsmen Grade II working in the Zonal Railways were,

however, placed in the revised scale of Rs.5000-8000. On the plea that they were in the same scale as Draftsmen Grade II before implementation of the 5th CPC and also that their qualification and duty etc. are same, they demanded the pay scale of Rs.5000-8000. Their request was rejected, which compelled them to file OA before the Central Administrative Tribunal, Principal Bench, New Delhi. This OA has also been dismissed vide judgment dated 29.10.2004 and impugning that judgment, present writ petition is filed. The contention of the petitioners is 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. The pay scale of petitioners and Draftsman Grade II of Zonal Railways till 4th CPC. Howsoever, 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 the petitioners were given the scale

of Rs.4500-7000.

2. Mr.Rajan, learned counsel for the petitioners, was at pain to submit that it was a case of hostile discrimination when the petitioners and the Draftsmen Grade II were treated alike till 31.12.1995 and with effect from 1.1.2006 they were placed in different scales. His submission was that this happened notwithstanding the fact that the clarifications for the post of Draftsmen Grade 'A' as well as the Draftsmen Grade II were same. For this purpose, he referred to the Recruitment Rules specifying the clarifications for appointment/promotions to these posts. He also submitted that the petitioner had earlier filed OA No.855/2000 seeking this relief, but the Tribunal had dismissed the said OA. Thereafter, review of that order was also sought by petitioners but the same was not entertained. The petitioners thereupon filed writ petition before this Court which remanded the matter back to the Tribunal to consider the review application filed on the limited question of revision of the pay scale at Rs.5000-8000 instead of Rs.4500-7000. Learned counsel submitted that thereafter the review was disposed of by the Tribunal vide order dated 3.10.2002 directing the Department to constitute an Anomaly Committee. He argued that the Anomaly Committee, while

rejecting the plea of the petitioners, ignored the observations of the Tribunal contained in order dated 3.10.2002 wherein the Tribunal had clearly observed as under:-

“8. Taking into account the above recommendations of the subsequent replacement scale accorded to the Draftsmen Grade II by the Govt. of India, i.e., Rs.425-700 revised to Rs.1400-2300, we see force in the submissions made by Shri K.B.S. Rajan, Learned Counsel that the expert bodies like the 3rd and 4th Pay Central Pay Commissions have considered the qualifications possessed by these persons for direct recruitment as either the same or similar, i.e., Matric or 10 + 2 + Diploma in engineering or equivalent. It is not disputed by the respondents that till the recommendations of the 5th Central Pay Commission, Draftsmen Grade II/Draftsmen Grade ‘A’ in Zonal Railways and Railway Board, respectively were getting the same pay scale, i.e., revised pay scale of Rs.1400-2300. However, the disparity in the pay scale has crept in after the recommendations of the 5th Central Pay Commission. In this connection, we also see force in the submissions made by Shri K.B.S. Rajan, learned counsel, that when the qualifications for direct recruitment as they existed previously have already been equated, excepting the same revised pay scale for these two categories of persons, the question would arise whether after the 5th Central Pay Commission, they can make distinction based on the qualifications required for direct recruitment in the lower pay scales as has been done by the respondents presently.”

3. Learned counsel for the petitioners further submitted that the duties of both Draftsmen Grade ‘A’ as well as Draftsmen Grade II were the same as noted by the Tribunal in the

aforesaid order. In fact, the petitioners were performing supervisory duties over the zonal office staff and therefore, they could not have been given lesser pay.

4. Mr.Nangia, learned counsel appearing for the respondents, on the other hand, countered the aforesaid submission. He raised fervent plea to the effect that the comparison of the job profile, qualification, duties, mode of appointment etc. of the two posts is the function of the expert bodies like the Pay Commission and the Anomaly Committee. In the present case, neither the 5th CPC recommended such higher pay scales for the Draftsmen Grade 'A' nor the Anomaly Committee found any merit in the claim of the petitioners. Therefore, this Court should not interfere with this exercise more so when the Tribunal, after taking note of these submissions, found justification in the exercise done by the 5th CPC as well as the Anomaly Committee
5. After hearing the counsel for the parties and considering the matter we find force in the submission of the learned counsel for the respondents and are of the view that the Tribunal has rightly rejected the application of the petitioners herein. We find that the 5th CPC specifically dealt with this aspect. While

considering the case of the Senior Draftsmen/Draftsmen Grade II in the Zonal Offices, the 5th CPC specifically recommended the replacement scale of Rs.1600-2660 in their case. This is clear from discussion contained in Para 83.177. This para comes under discussion in respect of the employees of Zonal Railways, under the heading “Zonal Railway Management”, discussion with regard to which category starts with Para 83.65. In so far as personnel working in the Railway Board are concerned, the matter regarding their wage revision is specifically dealt with in Para 83.7 onward. It is obvious from the above that the recommendation contained in para 83.177 deals with the Senior Draftsmen working in Zonal Railways and does not apply to the persons like the petitioners, who are working in the Railway Board. We may also note that when the matter was referred to the Anomaly Committee, it precisely dealt with the same question, as raised by the petitioners and their plea, on the basis of which they are seeking pay parity, was discussed specifically. The Anomaly Committee, however, found that there were so many disparities between the cadre structure and pay scale of the Railway Board and Zonal Railway Draftsmen. The same is filed by the respondents in a

tabulated form as under:-

S.No	Name of Post	Pay Scale (RP/RPS/RSRP)	Recruitment Qualification	Name of post	Pay Scale (RP/RPS/RSRP)	Recruitment qualification
1.	Head Draftsman	Rs.700-900/ Rs.2000-3200 Rs.6500-10500	100% by promotion 3 years experience in the lower grade (Non-selection)	Chief Draftsmen	Rs.700-900 Rs.2000-3200 Rs.6500-10500	100% by promotion
2	Senior Draftsman	Rs.550-750 Rs.1600-2660 Rs.5000-8000	100% by promotion 3 years experience in the lower grade (Selection)	Draftsman Gr.I	Rs.550-750 Rs.1600-2660 Rs.5500-9000	75% by promotion 25% direct recruitment from Engg. Graduates in respective engineering discipline
3	Draftsman Gr. 'A'	Rs.425-700 Rs.1400-2300 Rs.4500-7000	100% by promotion 5 years experience in the lower grade (Non-selection)	Draftsman Gr.II	Rs.425-700 Rs.1400-2300 Rs.5000-8000	80% by promotion 20% by direct recruitment from Engg. Diploma holders of 3 years duration
4.	Draftsman Gr. 'B'	Rs.330-560 Rs.1200-2040 Rs.4000-6000	By direct recruitment Matriculation with certificate/ diploma in Draftsmanship	Draftsman Gr. III	Rs.330-560 Rs.1200-2040 Rs.4000-6000	Minimum ITI certificate in draftsmanship from recognized Institute Diploma (Engg./Draftsmanship) holders are also eligible

6. In the counter affidavit, the respondents have further explained that the Railway Board has its own staff structure and pay scales. The Railway Board is separately dealt with in the Pay Commission Reports. The Zonal Railways which are generally referred to as Railways are governed by separate recommendation of Central Pay Commission and separate

decisions. The 5th Central Pay Commission has generally followed the principle of improved pay scales for higher level of qualifications and skills. This is in line with the overall objective of the Government to gradually upgrade the level of literacy and skills amongst its employees with a view to enhance the overall working efficiency. It is explained that in terms of the instructions contained in Paras 153 and 154 of the Indian Railways Establishment Manual (1989 Edition) on the Zonal Railways, there is an element of direct recruitment of diploma holders in Engineering in the category of Draftsmen Grade II in the scale of Rs.1400-2300 whereas the direct recruitment in the case of Railway Board Drawing Staff is made at Grade III in the pay scale of Rs.1200-2040 with the qualification of Diploma in Draftsmanship. It is further explained that the recruitment qualifications prescribed for entry in Grade of Rs.1400-2300 (revised scale of Rs.5000-8000) is Diploma in Engineering discipline which is distinct and superior to diploma in Draftsmanship. Moreover, duration of diploma in Engineering discipline is of three years, whereas the duration of diploma in Draftsmanship is two years, and this fact cannot be overlooked/ignored while drawing any parallel between the Railway Board's Draftsmen

and Zonal Railways' Draftsmen. This is in line with recommendations of the 5th CPC wherein in Para 50.37(1) the Commission has further articulated:

“There should be identical pay scales for posts with identical recruitment qualifications. Specific requirements of individual departments may be taken care of by the respective administrative ministries, which may, if justified, prescribe pay scales different from the general pay scales recommended by us below.”

7. It is also explained that the Railway Board thoroughly examined the matter of grant of scale of pay to its employees in the light of the recommendations of the 5th CPC and after considering all the relevant factors issued separate notifications for revision of pay scales as per the Report of the 5th CPC in respect of the Zonal Railways and the Railway Board staff. The Drawing staff of the Railway Board have been allotted normal replacement scales because the qualifications mentioned for direct recruitment, on the basis of which higher replacement scales have been recommended by the 5th CPC for the Draftsmen of the Zonal Railways, are not prescribed in the cadre of Drawing staff of Railway Board. However, the staff on Zonal Railways have been allotted different/superior pay structure because they possess the

prescribed direct recruitment qualifications. The question of change in recruitment qualification so as to grant similar pay scales as available to Zonal Railways staff or CPWD or other Central Ministries was also examined so that such recruitment shall actually take place and in due course of time, the mix in the cadre would acquire a new character. However, in view of the fact that Drawing cadre was a diminishing one, such exercise would have largely been an academic exercise. Therefore, change in recruitment qualification was not attempted. It is further explained that in 1995 it was decided that due to technology upgradation in the form of introduction of computers and with the softwares like AUTOCAD and AUTOCAM, further recruitment in the entry grade in drawing cadre be stopped. As such, there is no fresh recruitment thereafter. Also the vacancies resulting in promotion of staff to higher grades are not being filled up. Therefore, the Drawing cadre is now a diminishing cadre.

8. It is also clarified that howsoever long the list of duties of the Draftsmen of the Railway Board may be, it is a fact that hardly any original work relating to drawing/design gets down in the Drawing Office of the Railway Board. Original designs are done by the Field Units in the Zonal Railways and on the

basis of the same drawing is developed by the Draftsmen in the Railway Board. A perusal of duty lists of Draftsmen in different Directorates of Railway Board reveals that discharging of the most of the listed duties do not require any technical knowledge and skill and as such can be handled by non-technical personnel as well. There are 33 posts spread over four grades ranging from Rs.6500-10500 to Rs.4000-6000 and the on-roll cadre strength is 20. This high level of vacancies is also indicative of the fact that the work has lessened considerably. It is further clarified on the basis of the statements of the recruitment qualifications and the duties of the Draftsmen of the Railway Board, to which the petitioners belong, and the Zonal Railways, are distinctly different in so far as the nature and volume is concerned. In the Railway Board's office, with the automation of work with computers, the work load has considerably reduced. The staff in the Railway Board is mainly performing secretarial work, viz., preparation of statements and monitoring progress on Zonal Railways. Keeping in view these factors, the petitioners have been rightly given the normal replacement scale of Rs.4500-7000 in place of their earlier scale of Rs.1400-2300.

9. In view of the above, we do not find any fault with the decision of the Government in giving different pay scales that too when it is based on the recommendation of the Pay Commission. It is trite law that such a task is best left to the expert bodies like the Pay Commission and the Anomaly Committees. The exercise done by them does not appear to be either perverse or irrational or discriminatory. The Tribunal in this respect has taken note of the observations of the Supreme Court as is clear from para 8, which reads as under:-

“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 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 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 instant case, both the Pay Commission as well as the 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 cases cited above."

10. We are, thus, constrained to dismiss this writ petition.

However, there shall not be any orders as to costs.

(A.K. SIKRI)
JUDGE

July 04, 2008
HP.

(J.R. MIDHA)
JUDGE