

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.3349/2010**

% **Date of Decision: 17.05.2010.**

UNION OF INDIA & OTHERS PETITIONERS
Through Mr. Keshav Dayal, Senior Advocate with
Mr. Gagan Mathur, Mr. Sanjay Kumar
Singh, Advocates.

Versus

V.K. SHARMA & OTHERS RESPONDENTS
Through Mr. Seeraj Bagga, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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C.M. 6737/2010

Exemptions allowed subject to all just exceptions.

W.P. (C.) No.3349/2010

1. This writ petition has been filed by the petitioners against the order dated 23.12.2009 of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') in OA No 1499/2009 whereby the Tribunal has directed that the DoPT

order No 21/36/2003-CSI dated 13.11.2003 be extended to the Section Officers/Private Secretaries working in ICAR, HQ. The Tribunal has also directed the respondents to disburse all admissible pay arrears and recoveries if any made from the employees.

2. Briefly stating, it was the case of the respondents before the Tribunal that in the Fifth Pay Commission, the Government vide order dated 13.11,2003 granted non-functional pay scale of Rs 8000-13500 to the Section Officers (SOs) of the Central Secretariat Staff (CSS) with effect from 01.01.1996 notionally and with all financial benefits w.e.f 03.10.2003. In so far as Section Officers (SOs) of ICAR HQ were concerned, out of 51 eligible SOs, 33 were allowed the non-functional pay scale of Rs 8000-13500 exactly in the same manner as for CSS. When the proposal for remaining 18 SOs was processed, the Ministry of Finance raised objections stating that the non-functional pay scale was meant only for CSS. In the result, those SOs working in ICAR HQ who were drawing non-functional pay scale when retired, did not get pensionary benefits in that non-functional pay scale. Further, others also did not get the non-functional pay –scale.

3. In March, 2008 report of Sixth Pay Commission was published and the recommendations of the Sixth Pay Commission was accepted on 29.08.2008 w.e.f 1.01.2006 and Gazette Notification to that effect was issued that the scale in respect of Section Officers/ Private Secretaries as per the notification shall be available only in such of

those organizations/services which have had a historical parity with CSS/CSSS.

4. The ICAR on the subject of implementation of Sixth Central Pay Commissions recommendations for the Assistant Personal Assistant and Section Officer/Private Secretaries in ICAR HQ issued office Memorandum bearing No. F.No.7(28)/2008-Estt,1 dated 7.11.2008 *inter alia* stating that Ministry of Finance has approved that the pay structure for Assistants and Section Officers in CSS may be extended to the Assistants/Personal Assistant and Section Officer/PS in ICAR HQ.

5. However Dept of Expenditure, Ministry Of Finance objected to ICAR orders No. 33(18)/20003-Estt, dated 09.02.2004 and did not agree to the same vide their UO No 303/Dir IC/09 dated 16.03.2009 to the proposal of ICAR. Consequently, it was decided with the approval of the Ministry of Agriculture and President, ICAR to withdraw the non-functional pay scale granted to SOs w.e.f. 03.10.2003 and notices to that effect were issued.

6. Thereafter, respondents filed an OA No. 1499/2009 before the Tribunal *inter alia* praying that the respondents be directed to grant the benefit of non-functional pay-scale of Rs 8000-275-13500 also w.e.f. 01.01.1996 notionally and w.e.f. 03.10.2003 with all consequential financial benefits, etc which was allowed by the Tribunal.

7. The learned counsel for the petitioners submitted before the Tribunal that after the implementation of the Sixth Central Pay Commission Recommendation, the proposal was again mooted and considered by the Anomalies Committee of the Ministry of Finance which did not agree to grant the non-functional pay scale for the SOs of ICAR HQ during 5th CPC period on par with SOs of CSS. Consequently, with the approval of the President, ICAR (Agriculture Minister) notices were issued to all concerned for withdrawing the said scale granted w.e.f. 03.10.2003 to make necessary recoveries from them.

7. However, the Tribunal after considering the submissions made on behalf of both the parties observed that though the implementation of “equal pay for equal work” is the domain of the expert body like Pay Commission yet judicial review is not altogether excluded. However, the SOs post of ICAR HQ are similar to the post of SOs in the CSS, as also the functions discharged by the SOs of both ICAR and CSS were similar. Hence when the work is equal, the equal pay for equal work does arise. In this regard, the Tribunal relies upon the extracts of the relevant Government order, i.e.:

Recommendation No.03.01.09 of the Sixth Central Pay Commission (Pages 65-66)

3.1.9 Accordingly, the Commission recommends upgradation of the entry scale of Section Officers in all Secretariat Services (including CSS as well as non participating ministries/departments/organizations) to Rs. 7500-12000 corresponding to the revised pay band PB 2 of Rs. 8700-34800 along with grade pay of Rs. 4800. **Further, on par**

with the dispensation already available in CSS, the Section Officers in other Secretariat Offices, which have already had an established parity with CSS/CSSS, shall be extended the scale of Rs. 8000-13500 in Group B corresponding to the revised pay band PB 2 of Rs. 8700-34800 along with grade pay of Rs. 4800 on completion of four years service in the lower grade. This will ensure full parity between all Secretariat Offices. It is clarified that the pay band PB 2 of Rs. 8700-34800 along with grade pay of Rs. 4800 is being recommended for the post of Section Officer in these services solely to maintain the existing relativities which were disturbed when the scale was extended only to the Section Officers in CSS. The grade carrying grade pay of Rs. 4800 in pay band PB-2 is , otherwise, not to be treated as a regular grade and should not be extended to any other category of employees. These recommendations shall apply mutatis-mutandis to post of Private Secretary/equivalent in these services as well. The structure of posts in Secretariat Offices would now be as under:-

Post	Pre revised scale	Corresponding revised pay band and grade pay
LDC	Rs.3050-4500	PB-1 of Rs.4860-20200 along with grade pay of Rs.1900
UDC	Rs. 4000-6000	PB-1 of Rs. 4860-20200 along with grade pay of Rs. 2400
Assistant	Rs. 6500-10500	PB-2 of Rs. 8700-34800 along with grade pay of Rs. 4200
Section Officer	Rs. 7500-12000 Rs. 8000-13500* (on completion of four years)	PB-2 of Rs. 4700-34800 along with grade pay of Rs. 4800 PB-2 of Rs. 8700-34800 along with grade pay of Rs. 5400* (on completion of four years)
Under Secretary	Rs. 10000-15200	PB-3 of Rs. 15600-39100 along with grade pay of Rs. 6600

Director	Rs. 14300-18300	PB-3 of Rs. 15600-39100 along with grade pay of Rs. 7600
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*This scale shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS. Services like AFHQSS/AFHQSSS /RBSS and Ministerial/ Secretarial posts in Ministries/Departments organizations like MEA, Ministry of parliamentary Affairs, CVC, UPSC, etc. would therefore be covered.

II. Section II of part B on the revised pay scales for certain common categories of staff notified in the Gazette of India on 29.08.2008. (pages 68-69)

Sl.No.	Post	Present Scale	Revised Scale	Corresponding Pay Band & grade Pay (In Rupees)		Para NO. of the report
				Pay Band	Grade Pay	
1	2	3	4	5	6	7
I Office staff in the Secretariat*						
1.	Section Officer/PS/equivalent	6500-10500	7500-12000, 8000-13500 (On completion of four years)	PB-2 PB-3	4800 5400 (on completion of 4 years)	3.1.9 (Modified by Govt.)

*This scale shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS. Services like AFHQSS/AFHQSSS /RBSS and Ministerial/ Secretarial posts in Ministries/Departments organizations like MEA, Ministry of parliamentary Affairs, CVC, UPSC, etc. would therefore be covered.

III. Para 2 (i) of the Ministry of Finance, Department of Expenditure, Implementation Cell U.O. No. 7.1/1/2008-IC dated 30.10.2008.(Page-70)

"Department of Agricultural Research & Education may please refer their file No. 7 (28)/2008-Estt. I regarding the subject cited above.

2. The proposal of the administrative department has been considered in this Department. The proposal is concurred with subject to the following modifications which are in consonance with the pay scales granted by the

Government to various common category posts in the Central Government:-

(i) Government has approved the following pay structure for Assistants and Section Officers in the Central Secretariat and the same may be extended to Assistants/Pas and Section Officers/Private Secretaries in the ICAR Headquarters only:-

Post	Pre revised scale	Corresponding revised pay band and grade pay
Assistant/Personal Assistant	Rs.6500-10500	PB-2 of Rs. 9300-34800 along with grade pay of Rs. 4200
Section Officer/ Private Secretary	Rs. 7500-12000 Rs. 8000-13500 (on completion of four years)	PB-2 of Rs. 9300-34800 along with grade pay of Rs. 4200 PB-3 of Rs. 15600-39100 along with grade pay of Rs. 5400 (on completion of four years)

IV. Office Memorandum F.No. 7 (28)/2008-Estt. I dated November 7, 2008.(Page 72)

“The undersigned is directed to state that in pursuance of Ministry of Finance, Department of Expenditure s O.M. No. 7/23//2008-E.III (A) dated 7.10.2008, the applicability of Part B of the First Schedule to the CCS (Revised Pay) Rules, 2008 in ICAR was examined by a Group of Officers constituted vide Council s O.O. No. 7 (28)/2008-Estt.I dated 3.10.2008. The recommendations of the Group of Officers was accordingly referred to the Ministry of Finance for soliciting their approval. In this regard, the Ministry of Finance vide their U.O. No. 7.1/1/2008-IC dated 30.10.2008 has approved that the pay structure for Assistants and Section Officers in the Central Secretariat may be extended to the Assistants/ Personal Assistants and Section Officers/ Private Secretaries in Indian Council of Agricultural Research Hqrs. as follows:

Post	Pre revised scale	Corresponding revised pay band and grade pay
Assistant/Personal Assistant	Rs.6500-10500	PB-2 of Rs. 9300-34800 along with grade pay of Rs. 4200
Section Officer/ Private	Rs. 7500-12000 Rs. 8000-13500	PB-2 of Rs. 9300-34800 along with grade pay of Rs. 4200 PB-3 of Rs. 15600-39100 along

Secretary	(on completion of four years)	with grade pay of Rs. 5400 (on completion of four years)
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* As applicable and implemented in the Central Secretariat.

8. Thereafter the analysis of the Tribunal revealed that (i) there had been an 'established parity' of the Section Officers in other Secretariat offices with the SOs of CSS/CSSS; (ii) The pre-revised pay scale for other Secretariat offices had been acknowledged by the 6th CPC and the main pay scale for Section Officers, had been shown as Rs.7500-12000, and non-functional pay scale of Rs.8000-13500 (On completion of four years); (iii) The non-functional pay scale of Rs.8000-13500 shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS'; (iv) The Ministry of Finance in its U.O. No.7.1/1/2008-IC dated 30.10.2008, while approving the proposal of ICAR for the 6th CPC recommendations has acknowledged Rs.8000-13500 (on completion of 4 years) as the pre revised non-functional pay scale for SOs/PS and (v) The PB-3 of Rs. 15600-39100 along with-Grade pay of Rs.5400 (On completion of 4 years) has been accepted as the non-functional pay scale for SOs/PS w.e.f. 01.01.2006 in the 6th CPC.

9. Thus, the Tribunal came to the conclusion that the 6th CPC has accepted the historical and established parity between the ICAR HQ, SO/P.S. with the SO of CSS, so the pre-revised non-functional pay scale

as admissible to SO of CSS would *mutatis mutandis* would be applicable for the SO/PS of ICAR HQ.

10. Thus the argument of the petitioners made before us that there is no parity between the employees of ICAR with the officers of CSS as there are differences in the mode of recruitment, nature of duties and responsibilities, organizational hierarchy etc. is misconceived in the light of Government order dated 30.10.2008 where it has been approved that the pay structure for Assistants and Section Officers in the CSS may be extended to the Assistants/Personal Assistants and Section Officers/Private Secretaries in ICAR HQ. One more argument advanced before us is that granting of pay scales is purely an executive function and hence the Courts should not interfere with the same as it may have a cascading effect creating all kinds of problems for the Government and the authorities. However, this argument cannot be sustained as it is observed by the Tribunal that though fixation of pay and removal of anomalies is a domain of expert bodies like pay commission and the forum to decide it, is of the executive, yet judicial review is not altogether excluded.

11. In these circumstances, we find no reason to interfere with the order passed by the Tribunal allowing the petition filed by the petitioner as we do not find any reason to exercise jurisdiction vested in this Court under Article 226 of the Constitution of India in the facts of this

case. Accordingly, the writ petition is dismissed with no order as to costs.

C.M.6736/2010(stay)

In view of the orders passed above, the application has become infructuous and is dismissed as such.

MOOL CHAND GARG, J.

MAY 17, 2010
'anb/sg'

ANIL KUMAR, J.