

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

% Judgment delivered on: 25th January, 2011

+ **WP(C) No.6395/2002**

GOVT. OF NATIONAL CAPITAL
TERRITORY OF DELHI & ANR. PETITIONERS
Through: Mrs.Avnish Ahalawat, Advocate

versus

SHRI KRISHAN MURARI & ORS. RESPONDENTS
Through: Mr.Sachin Dutta and
Mr.Abhimanyu Kumar,
Advocates for Respondent Nos.5
and 6.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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

DIPAK MISRA, CJ

Invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner, namely Government of National Capital Territory of Delhi and another have called in question the legal propriety of the order dated 1.4.2002 passed by the Central Administrative Tribunal (for short 'the tribunal') in O.A.No.114 of 2001.

2. Be it noted, initially the writ petition was dismissed by order dated 3.11.2003 and the same was challenged in Civil Appeal No.287/2005 which has been allowed vide order dated 25.3.2010 by the Apex Court and the matter has been remitted for fresh adjudication.

3. The facts which are essential to be stated for adjudication of this writ petition are that the private respondents approached the tribunal under Section 19 of the Administrative Tribunals Act, 1985 for appropriate direction for grant of higher pay-scale which was being paid to their counterparts in National Civil Defence College, Nagpur. It was contended before the tribunal that they are working as Demonstrators in Central Training Institute under Directorate of Home Guards in the pay scale of Rs.750-940 (pre-revised) while their counterparts in the National Civil Defence College, Nagpur and in Haryana State who are at par with them and are performing the same duties as themselves are in the higher pay scale of Rs.1200-2040 (pre-revised). Thus, in essence, they claimed parity on the foundation of equal pay for equal work.

4. The said stand of the private respondents was combated by the present writ petitioners contending, inter alia, there is no parallel in the recruitment rules of Demonstrators working in the Directorate of Home Guards and those working in NCDC, Nagpur and, hence, the

upgradation in pay scales is impermissible.

5. The tribunal in paragraphs 5 and 6 has expressed the view as follows:

“5. Neither side have furnished cogent materials to establish whether or not the duties, responsibilities, recruitment rules, eligibility qualifications etc. justify parity of pay scales between Demonstrators working in CTI under Directorate of Home Guards to which category applications belong and the Demonstrators working in NCDC, Nagpur. However, we notice that Home Ministry in its letter dated 27.12.90 (Ann. A-6) addressed to GNCT of Delhi have equated Demonstrators with Haveldars and have called upon GNCT of Delhi to revise the pay scale of the post of Demonstrators at CTI of Home Guards and Civil Defence keeping in view the pay scale of the post of Haveldars in Home Guards and Civil Defence Organisation of Delhi.

6. We are informed that even this has not been done. Respondents in their reply state that this has not been implemented because there is no sanctioned post of Haveldars in the Directorate of Home Gaurds.”

6. From the aforesaid reasonings ascribed by the tribunal, it is quite clear that the tribunal did not advert to the issue of duties, responsibilities, recruitment rules, eligibility qualifications, etc. and any kind of justification of parity of pay scale. Emphasis was laid by the tribunal on the letter dated 27.12.1990 and on that basis and taking note

of the fact that the Union of India had not filed any separate reply a direction was issued to the present writ petitioners to implement the said letter and grant consequential benefits including arrears of pay and allowances.

7. It is contended by Mrs. Avnish Ahalawat, learned counsel for the petitioners that the only issue alive for consideration in this writ petition is whether the said letter dated 27.12.1990 is to be implemented. It is contended by her that after receipt of the said letter the petitioners had entered into correspondence with the Union of India and the same has been treated to be advisory in nature and once it is so treated a mandamus cannot be issued. Learned counsel further submitted that the Union of India on 31.5.1994 had referred the matter to the 5th Pay Commission for consideration.

8. Despite service of notice, there is no representation by the private respondents.

9. Mr. Sachin Dutta, learned counsel for the Union of India submitted that though in the year 1994 the matter was sent for consideration to the 5th Pay Commission, the Pay Commission did not change the pay scale. However, it is submitted by him that thereafter, the Union of India has issued the letter dated 7.7.2004 stating, inter alia,

that letter dated 27.12.1990 was mainly advisory and it is open to the petitioner to do the needful in the matter.

10. To appreciate the factual scenario in entirety, we may refer to the letter dated 27.12.1990, which reads as follows:

“I am directed to refer to your letter No.F.1/58/89 Home (G) dated the 30th July, 1990 on the subject noted above, addressed to the Director (Delhi) Govt. of India, Ministry of Home Affairs, and to say that the post of Demonstrator, authorized by the Govt. of India, vide this Ministry's letter No.2/7/67 DGCD (CD) dated 12th May, 1969 (copy enclosed), is equated with that of Havildar and not to that of Demonstrator at the NCDC, Nagpur. Therefore, the scale of pay of the post of Demonstrator at the CTI of HGs and CD may be revised keeping in view the scale of pay of the post of Havildar in the HGs & CD organization of Delhi, in consultation with your Finance Department.”

11. After the said letter was received by the petitioner, a communication was made on 27.3.1991 stating, inter alia, that the matter relating to revision of pay scale of Demonstrators was taken up with the Finance Department of GNCTD which has opined that so far the Government of India has not delegated any such powers to create / upgrade non plan posts and in such circumstances the matter may be taken with the Government of India for the upgradation of the posts of Demonstrator. Thereafter, number of correspondences took place and

eventually by letter dated 31.5.1994 the Government of India communicated to the petitioners that subject relating to enhancement of pay scales of Demonstrators of Home Guards and Civil Defence, of Govt. of NCT of Delhi, was again taken up with the Integrated Finance who have ruled that, since, the 5th Pay Commission has been set up, their case may be referred to the 5th Pay Commission for consideration. As is manifest from the materials brought on record, the 5th Pay Commission adverted to it and eventually the 5th Pay Commission did not recommend for hike in the pay scale.

12. As is evincible, all these facts were not brought to the notice of the tribunal. As is perceivable from the order of the tribunal, the tribunal has rested its order on the letter dated 27.12.1990. It is worth noting, a letter has been issued on 7.7.2004 which is a letter from the Union of India to the GNCTD. We think it appropriate to reproduce the relevant part of the said letter:

“2. The case has been examined this Office in depth. The Post of Demonstrator in National Civil Defence College, Nagpur is a class III post whereas NCT Delhi while adopting the nomenclature has created its own hierarchy in the office in the office of the Home Guard and the post of the Demonstrator in Delhi Govt. is lowest level post in Class IV. Therefore we find no justification in equating the two posts even though they carry the same nomenclature.

3. It may be further clarified that the instructions from this office by this office Letter No.I-36011/8/86-DGCD(HG) dt.27.12.1990 were mainly of advisory nature and the States / UTs were free to create their own hierarchy and pay scale.”

13. In view of the aforesaid, it is quite vivid that the correspondence that was made between the Union of India and the GNCTD had not attained finality; that the GNCTD had expressed this inability to the Union of India about its power to hike the pay scale; that the Union of India had never categorically stated that it would take the matter itself but on the contrary thought it appropriate that the matter should be adverted to by the 5th Pay Commission as regards the parity and the equivalence of the pay scale; that the 5th Pay Commission had delineated and rejected the said prayer; and that ultimately a letter has been issued, stating that the earlier communication was advisory.

14. In view of the aforesaid, direction issued by the tribunal to implement the said letter and confer the consequential benefits is absolutely fallacious. Thus, we are unable to concur with the said view. However, we may observe and clarify that the GNCTD should take a decision itself, as advised in law because that power has been given to it by the Union of India by letter dated 7.7.2004.

15. In the result, with the aforesaid observations the writ petition is allowed and the order dated 1.4.2002 passed by the tribunal, Annexure C, is quashed. There shall be no order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J

JANUARY 25, 2011
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