

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

Date of decision: July 09, 2013

+ **W.P.(C) 4271/2013**

DILSHAD AHMED

Represented by: Petitioner
Mr.Mohd. Mobin
Akhtar, Advocate

versus

U.O.I & ORS.

Represented by: Respondents
Mr.Jatan Singh, CGSC
and Mr.Soayib Qureshi,
Adv. for R-1
Mr.Anil Grover, Adv.
for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

C.M No.9934/2013 (Exemption)

Allowed.

W.P.(C) 4271/2013

1. Mr.Dilshad Ahmed who is working as Machine Assistant in Sports Authority of India, respondent No.2, makes a claim for pay revision from ₹950-1200 to ₹1200-1800 (pre-revised) effective from 1986, which was rejected by the Central Administrative Tribunal initially vide its order dated July 27, 2012 in Original Application No.2421/2012 and later vide its order dated May 10, 2013 in Review Application No.298/2012 in Original Application No.2421/2012. The Original Application No.2421/2012 is a second round of litigation. The initial one being Original Application

No.2286/2011 which was disposed of by the Tribunal vide order dated August 10, 2011 calling upon the respondent to consider his representation in accordance with Ministry of Finance decision taken on October 31, 1989 and pass a reasoned and speaking order. The respondent No.2 examined the matter and communicated its decision to the petitioner vide its communication dated April 19, 2012 which is reproduced as under:-

“Further, claim of Shri Ahmad has also been examined in the light of Ministry of Finance’s order dated 31.10.89 and M/O Urban Development’s letter No.C-17034/37/86-IDC(A-III) dated 30.08.90. It is found that there were 3 separate categories of Machine Assistants existed in MUD as under:-

<i>S.No.</i>	<i>Designation of post</i>	<i>Classification of post</i>	<i>Present scale (IVth CPC)</i>	<i>Scale to be applied</i>	<i>Remarks</i>
<i>1.</i>	<i>Machine Assistant (SI. No.5-page-1)</i>	<i>Skilled</i>	<i>950-1400</i>	<i>950-1500</i>	
<i>2.</i>	<i>Machine Assistant Photo Setter (SI. No.11-page-1)</i>	<i>Skilled</i>	<i>1150-1500</i>	<i>950-1500</i>	
<i>3.</i>	<i>Machine Assistant (Offset)</i>	<i>Skilled</i>	<i>950-1400</i>	<i>1200-1800</i>	<i>The post was classified as highly skilled Grade – II with re-designation as Offset Machine Assistant.</i>

Copy of MUD’s letter dated 30.08.90 is enclosed.

The above table clearly indicates that the post of Machine Assistant (Off-Set) has only been upgraded to the pay scale of

Rs.1200-1800/- while others categories of Machine Assistants has been given the scale of Rs.950-1500/- only. The scale of Rs.950-1400/-, 950-1500/- & 1150-1500/- have been merged in a single scale of Rs.3050-4590/- after the implementation of 5th CPC report vide Ministry of Finance, Resolution dated 30.09.1997. Further, there is no parity of work of Machine Assistant in SAI and Ministry of Urban Development as reported by SAI vide letter No.SAI/Pers/1717/(62)/2010/461 dated 11.04.2012.

The minimum qualification for direct recruitment to the post of Offset Machine Assistant in Ministry of Urban Development is diploma in Printing Technology (Offset) from a recognized institution, while in SAI it is Matriculation only. Thus, there is no parity in regard to qualification even.”

2. The Tribunal initially rejected the case of the applicant at the admission stage itself observing that the claim pertains to the year 1986 by observing that in this case the concept of pay parity is not in consonance with the total identity propounded by the Supreme Court.
3. The Review Application filed by the petitioner was dismissed by the Tribunal with the following reasoning.

“A careful perusal of the grounds on which the applicant is seeking review of the earlier Order passed in the Original Application reveals that the applicant is in fact seeking re-hearing of the matter. This is not permissible in exercise of powers of Review. The Review Applicant challenges the correctness of the findings recorded in the Order whose review is being sought. If the applicant feels that findings recorded by this Tribunal have been erroneous, proper remedy for this would be to challenge the same in an appeal. This would not in any way warrant a review of the Order as sought by the applicant. As regards, the plea of the review applicant with regard to Office Memorandum dated 30.8.1990, as at page 41 of the Original Application, on the

subject "Report of the Inter-Departmental Committee on Printing Staff - Revision of pay scales and/or classification of skills of the various printing posts in the Presses under the Directorate of Printing - regarding." Reference to this has been made by the applicant in para 4 i) of the Original Application. However, the contentions put forth now in the Review Application were neither raised by the applicant in his Original Application nor at the time of hearing. The applicant has now sought to raise new points with a view to have a matter re-heard afresh on merits.

Having given our careful consideration, we are of the considered view that the applicant has not been able to make out a case for review of our earlier Order. We do not find any warrant to review the said Order in the facts and circumstances of the case."

4. As both the orders have been challenged before us we have heard the case on merits. During the course of arguments, Mr.Mohd. Mobin Akhtar would attack the order of the Tribunal on the ground that the Tribunal has totally misdirected itself in determining the question of parity. According to him the claim of the petitioner is on the basis of the decision/ instructions contained in the Ministry of Finance O.M dated October 31, 1989 which is based on the acceptance of the 4th Pay Commission. We have seen the office memorandum dated October 31, 1989. A perusal of the same would show that the same relates to the printing staff and the said order also contemplate different posts of Machine Assistant and the posts have been classified as unskilled, semi-skilled, skilled, highly skilled (grade –II), highly skilled (grade–I) etc. Different pay scales have been prescribed depending upon the classification of posts. We have seen the order of the Tribunal. The Tribunal does not considered the matter from the perspective it has been agitated before us. Learned counsel for the petitioner has taken

us to the pleadings filed by the petitioner before the Tribunal. Parity with the Machine Assistant (Offset) in the Ministry of Urban Development is not an issue. The issue which requires consideration is whether the nature of duties performed by the petitioner is skilled or highly skilled. This job is primarily of the administration by the persons who have the expertise, knowledge of duties and level of responsibilities etc. This Court would not like to venture into a realm in which it does not have such an expertise. We are conscious of the fact that this aspect has not been considered by the respondents at least in the communication dated April 19, 2012 but we are of the view that the claim of the petitioner relates back to the year 1986 when the recommendations of the 4th Central Pay Commission were implemented. 27 years have gone by. It is too late in the day for the petitioner to agitate the issue of revision of pay scale effective from 1986. It is a case where the petitioner has not approached the Judicial Forum at appropriate time. The submission of the counsel for petitioner that he has been agitating the issue with the department would be inconsequential in the facts of this case. We find no merit in the present petition. The same is dismissed.

7. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 09, 2013
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