

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

% *Judgment Reserved on : January 23, 2013*
Judgment Pronounced on : February 01, 2013

+ **WP(C) 7078/2012**

S.K.SHARMA Petitioner
Represented by: Mr.Rajesh Srivastava, Advocate.

versus

NATIONAL COUNCIL FOR CEMENT OF
BUILDING MATERIAL & ANR. Respondents
Represented by: Mr.Ravi Sikri and Ms.Nema
Bhatnagar, Advocates for R-1.
Mr.Sunil Kumar and Mr.Rajiv Ranjan Mishra,
Advocates for R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. S.K.Sharma, an employee of 'National Council for Cement of Building Materials' (hereinafter referred to as 'the Cement Council') seeks pay parity with Assistants working in the different Ministries and Department of Government of India; he being employed as an Assistant Manager. It is his case that he was appointed under the Cement Council as a Senior Assistant in the pay-scale ₹425-850/- (Level 1) which was the pay-scale in vogue as per recommendations of the third Central Pay Commission recommendations pertaining to the employees under the Union and implemented by the Cement Council. It is further his case that the 4th Central Pay Commission recommended the replacement scale of

₹1400-2600 for Assistants under the Union which was implemented by the Government with effect from January 01, 1986 and likewise by the Cement Council. He pleaded that Assistants working in the Central Secretariat Service who were likewise placed in the pay-scale ₹1400-2600/- challenged the same and pleaded an entitlement to be placed in the pay-scale ₹1640-2900/- and succeeded. He further pleads that by reason of an Office Memorandum dated 31st July 1990, the President prescribed a revised scale of pay of ₹1640-2900 from the pre-revised scale of ₹425-800 for duty posts included in the Central Secretariat Services and Grade 'C' Stenographers of Central Secretariat Stenographers Service w.e.f. 1st January 1986. Such scale of pay was made applicable to Assistants and Stenographers in other organizations on the premise that the posts are in comparable pay scales and the method of recruitment through competitive examination is also the same. He highlights the under-noted portion of the office memorandum dated July 31, 1990:-

“2. Pay of the Assistants and Grade 'C' Stenographers in position as on 1.1.1986 shall be fixed in terms of Central Civil Service (Revised Pay) Rules 1986. The employees concerned shall be given option to opt for the revised scale of pay from 1.1.1986 or subsequent date in terms of Rule 5 *ibid*, read with Ministry of Finance O.M. No.7 (52)-E.III/86 dated 22.12.1986 & 27.5.1988 in the form appended to Second Schedule of the rule *ibid*. This option should be exercised within three months of the date of issue of this O.M. The option once exercised shall be final.”

2. The grievance is of he not being placed in the pay-scale ₹1640-2900/- which has a cascading effect when replacement pay-scales were implemented post acceptance of the recommendations of the 5th and the 6th Central Pay Commission.

3. OA No.2969/2011 filed by S.K.Sharma has been dismissed by the Tribunal notwithstanding he having placed material before the Tribunal that many Public Sector Undertakings had either granted the pay-scale ₹1640-2900/- to Assistants on their own or under judicial orders which were upheld till the Supreme Court. We highlight, the Tribunal has found that similar relief was denied to Assistants working in a few Public Sector Undertakings, as also subordinate offices of the Central Government.

4. Indeed, we find different destinations reached in different decisions on the same subject.

5. The Cement Council is an autonomous body established by the Government of India and as per an office memorandum dated October 15, 1984, No.9(4)E-Coord./84, the Government of India has required, fully or partly funded autonomous bodies, to incorporate the Rules or By-Laws in such manner that creation of posts, revisions of pay and allowances should be with the prior approval of the Government.

6. The writ petitioner places reliance upon a decision of the Supreme Court reported as 2010 (14) SCC 323 Yogeshwar Prasad & Ors. v. National Institute of Education Planning and Administration & Ors. where-under the Supreme Court directed placement of Assistants in the National Institute of Education Planning and Administration in the pay-scale of ₹1640-2900/- on the principle of parity noting similar benefit granted under various judicial opinions to Assistants working in various autonomous organizations.

7. We find that the divergence of opinion in various judicial pronouncements up to the Supreme Court is a result of the fact that some autonomous bodies or the Central Government drew attention of the

Supreme Court as also the High Courts to the effect that the 3rd and the 5th Central Pay Commission had specifically addressed themselves on the subject of parity and had found fault with the decisions which had directed that all Assistants be placed in the same pay-scale ignoring that even under the Central Government only Assistants inducted in the Central Secretariat Service and who work in the Central Ministries were placed in a higher pay-scale as against Assistants working in the subordinate offices under the Ministries. In other words, even under the Central Government, Assistants were being placed in the pay-scale ₹1400-2600/- as also in the pay-scale ₹1640-2900/-, we find that similar was the problem with Stenographers. Those under the Union and members of the Central Secretariat Stenographers' Service and working in the Ministries were placed in the pay-scale ₹1640-2900/- and others in the pay-scale ₹1400-2600/-. We additionally highlight one fact : That the Government of India had permitted autonomous bodies to pay Assistants and Stenographers salary in the pay-scale ₹1640-2900/- but only for those who were working in the headquarters of the said organizations.

8. In paras 46.31 to 46.34, the 5th Central Pay Commission had discussed the subject as under:-

“46.31 The pay scale of Assistants in the Central Secretariat Service (CSS) and Stenographers in the CSSS was revised by the Government on 31.7.1990, effective from 1.1.1986. Some of the Assistants/Crime Assistants and Stenographers Grade II working in the CBI, Directorate General of Income Tax (Investigation) and Directorate of Field Publicity filed a number of petitions before the Principal Bench of the Central Administrative Tribunal seeking benefit of the orders dated 31.7.90. Rejecting the

contention of the Union of India that Stenographers Grade II and Assistants in the non-Secretariat offices could not be compared with Stenographers Grade ‘C’ of CSSS and Assistants of CSS because of the different classification, method of recruitment, nature of duties and responsibilities and eligibility for promotion to higher grade, the CAT directed the UOI to place the petitioners in the pay scale of ₹1640-2900. The judgment of the CAT has been implemented.

46.32 The comparative position of Stenographers in the Secretariat and offices outside the Secretariat as it existed at the time of constitution of the Fifty CPC is as under:-

Secretariat	Non-Secretariat
a) Stenographer Grade D (₹1200-2040)	a) Stenographer Gr.III (₹1200 – 2040)
b) Stenographer Grade C (₹1640-2900)	b) Stenographer Gr.II (₹1400-2300) (₹1400-2600) (₹1640-2900)
c) Stenographers Grades ‘A’ & ‘B’ (Merged) (₹2000-3500)	c) Stenographer Gr.I (₹1640-2900)
d) Principal Private Secretary (₹3000-4500)	d) Senior Personal Assistant (₹2000-3200) e) Private Secretary (₹2000-3500)

	f) Principal Private Secretary (₹3000-4500)
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46.33 Associations representing stenographers have urged before us that there should be complete parity between stenographers in non-secretariat offices and in the Secretariat in matters relating to (a) pay scales, (b) designations, (c) cadre structure, (d) promotion avenues, (e) level of stenographic assistance to officers in technical, scientific and research organizations, etc. Suggestions have also been made for a higher pay scale for stenographers in the entry grade, treating advance increments granted for acquiring proficiency in stenography at higher speed as pay, allowing stenographers in non-Secretariat offices to compete in the Limited Departmental Competitive Examination (LDCE), and grant of Special Pay for operating computers, fax machines, etc.

46.34 We have given our careful consideration to the suggestions made by Associations representing stenographers in offices outside the Secretariat in the light of observations made by the Third CPC. The Commission had observed that as a general statement, it was correct to say that the basic nature of a stenographer's work remained by and large the same whether he was working with an officer in Secretariat or with an officer in a subordinate office. The Commission was of the considered view that the size of the stenographer's job was very much dependent upon the nature of work entrusted to that officer and

that it would not be correct, therefore, to go merely by the status in disregard of the functional requirement. By the very nature of work in the Secretariat, the volume of dictation and typing work was expected to be heavier than in a subordinate office, the requirement of secrecy even in civil offices of the secretariat could be very stringent. Considering the differences in the hierarchical structures and in the type of work transacted in the Secretariat and in the subordinate offices, the Commission was not in favour of adopting a uniform pattern in respect of matters listed in the preceding paragraph. To our mind, the observations of the Third CPC are as relevant today as they were at that point of time and we are not inclined to overlook them totally. In view of the above mentioned distinguishable features, we do not concede the demand for absolute parity in regard to pay scales between stenographers in offices outside the Secretariat and in the secretariat notwithstanding the fact that some petitioner stenographers Grade II have got the benefit of parity in pay scale through Courts. However, pursuing the policy enunciated by the Second CPC that disparity in the pay scale prescribed for stenographers in the secretariat and the non-secretariat organizations should be reduced as far as possible, we are of the view that Stenographers Grade II should be placed in the existing pay scale of ₹1600-2600 instead of ₹1400-2300/₹1400-2600. The next available grade of stenographers in non-Secretariat offices is ₹1640-2900 (Grade I). We do not recommend any change in the existing pay scale of Stenographers Grade I. Senior Personal Assistants and Private Secretaries are at present in the pay scale of ₹2000-3000 and ₹2000-3500 respectively. Giving

the Senior PAs the benefit of rationalization of pay scales, we recommend that both Sr.PAs and Private Secretaries should be placed in the pay scale of ₹2000-3500 and known as Private Secretaries. Stenographers in the newly recommended grade of ₹2500-4000 should be known as Senior Private Secretaries and those in the pay scale of ₹3000-4500 shall continue to be known as Principal Private Secretaries.”

9. A reading of the aforesaid paragraphs and in particular paragraph 46.34 of the report would bring out that a lower and a higher pay-scale for Stenographers and Assistants, working in the Secretariat of the Union and working elsewhere, was considered by the 3rd Central Pay Commission which had brought out that as a general statement, it was correct to say that the basic nature of a Stenographer's and Assistant's work remained by and large the same whether he was working with an officer in Secretariat or with an officer in a subordinate office. But the Commission was of the considered view that the size of the Assistant's and Stenographer's job was very much dependent upon the nature of work entrusted to that officer and that it would not be correct, therefore, to go merely by the status in disregard of the functional requirement. By the very nature of work in the Secretariat, the volume of dictation and typing work for Stenographers and clerical work for Assistants was expected to be heavier than in a subordinate office, the requirement of secrecy even in civil offices of the secretariat could be very stringent. Considering the differences in the hierarchical structures and in the type of work transacted in the Secretariat and in the subordinate offices, the Commission was not in favour of adopting a uniform pattern pertaining to the pay-scales.

10. The 5th Central Pay Commission accorded approval to the same.

11. Now, where an Expert Body has considered the matter and recorded reasons which are prima-facie supported with objective facts, a Court would be no place to opine to the contrary.

12. In the decisions reported as (1997) 3 SCC 568 Union of India & Anr. v. P.V.Hariharan & Anr., (1996) 11 SCC 77 State of Haryana & Ors. v. Jasmer Singh, (1999) 4 SCC 408 Alvaro Noronha Ferriera & Anr. v. Union of India & Ors., 1993 Supp. (3) SCC 243 State of West Bengal & Ors. v. Madan Mohan Sen & Ors., it has categorically been held that apart from other factors having a bearing on parity for equating posts, the nature of work in relation to volume, evaluation of duties and responsibilities had an important role to play.

13. Thus, we conclude that the petitioner has no case notwithstanding he being armed with a plethora of opinions, some even pronounced by the Supreme Court in his favour, because of the reason the opinions which favour him have not considered the fact that the differential pay-scale existed since the recommendations of the 3rd Central Pay Commission which had given good reasons and that even the 5th Central Pay Commission had gone into the issue; regretfully for the reason the attention of the Courts was not drawn to the deliberations of the two Central Pay Commissions. We find that in the opinion reported as AIR 1988 SC 1291 Federation of All India Customs and Central Excise Stenographers (Recognized) & Ors. v. UOI & Ors. the Supreme Court had dealt with the office memorandum dated July 31, 1990 on the subject of parity dealing with claim by Stenographers in subordinate

offices of the Union vis-à-vis the Stenographers in the Central Secretariats and had denied pay parity in the pay-scales.

14. Accordingly, we dismiss the writ petition but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

FEBRUARY 01, 2013