

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

Judgment Reserved on April 18, 2013
Judgment Delivered on May 20, 2013

+ **W.P.(C) 109/2010**

Dr. R.S RANA & ORS.

..... Petitioners

Represented by: Ms.Jyoti Singh, Sr. Adv. with
Mr.Padma, Ms.Saahila Lamba
and Mr.Tinu Bajwa, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Represented by: Mr.Nawal Kishore Jha,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this Writ Petition is to the order dated April 30, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A No.298/2008, whereby the Tribunal has rejected the claim of the petitioners to be placed in the scale of ₹2375-3500 with effect from January 01, 1986.

2. Pursuant to the recommendations of the 4th Central Pay Commission, a Committee headed by Dr.N. Sheshagiri was constituted by the Department of Electronics to examine and suggest reorganization of Electronic Data Processing (EDP) Posts and suggest uniform scales and designations for

these posts in the offices of the Central Government. Pursuant to the recommendations given by Dr.N. Sheshagiri, the Ministry of Finance, Department of Expenditure issued O.M dated September 11, 1989 on rationalization of pay scales of EDP Posts. In terms of the said O.M, all Ministries/ Departments were required to review the designations/ pay scales and recruitment qualification of the EDP Posts in their respective departments in consultation with their Financial Advisors. In so far as the Ministry of Defence is concerned, under the cadre control of Joint Secretary, Training and CAO, the EDP Posts existed in different organizations namely Air Headquarters, JCB, Signal Intelligence Directorate/ Army Headquarters, ADJ Systems/ Army Headquarters etc. The respondent No. 3 i.e. Joint Secretary, Training & CAO restricted the EDP Posts in the Ministry of Defence on the basis of report of Dr.Sheshagiri vide communication dated January 08, 1991. Further guidelines for rationalization of pay scales of EDP Posts were issued on September 15, 1993.

3. The petitioners are working as Sr.Technical Assistants (STAs). Suffice to state that in so far as the Sr.Technical Assistants (STAs) i.e. the petitioners are concerned, the scale of pay which they were drawing between January 01, 1986 and September 11, 1989 i.e. ₹1640-2090 was revised to ₹2000-3200 with effect from September 11, 1989 without change in any designation.

4. They had earlier filed an O.A No.397/2006 before the Tribunal making a claim for the pay scale of ₹2375-3500, as applicable to Statistical Investigators, who were re-designated as Programmers. The primary ground of challenge raised by the petitioners was that the feeder post and the promotional post carry identical pay scale, which according to the petitioners was not in consonance with the decision of the Full Bench of the

Tribunal, reported as (2002) 2 ATJ 6 M.V Rao & Ors. vs. Union of India & Ors. The Full Bench held that holders of lower as well as higher post having the same pay scale would amount to inequality and violation of Article 14 & 16 of Constitution of India. The petitioners also referred to an order passed in O.A No. 1288/2004, M. Krishnamurthy & Ors. vs. Union of India & Ors., decided on February 03, 2005, wherein the Technical Assistants & Statistical Assistants (re-designated as Group D), who were in the pay scale of ₹1600-2660 were granted the upgraded pay scale of ₹2000-3200 with effect from January 01, 1986. O.A No.397/2006 was disposed of by the Tribunal with a direction to the respondents to finalize revision of the pay scale of the petitioners from the due date as prayed for, by passing a reasoned and speaking order within a period of three months. The respondents vide order dated August 16, 2007 rejected the claim of the petitioners for grant of scale of ₹2375-3500. In the order, in para Nos.4,8 & 10 the respondents have observed as under:-

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4. *Whereas, the anomalies created in the cadre structure consequent to the CAT judgment in OA 1288/2004 for granting the higher pay scale to DEO 'D' have been referred to the specialist body i.e. Sixth Central Pay Commission for their holistic view and its recommendation on the issue.*

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8. *Whereas, DEO 'D' in GS/SI Dte are at the pay scale of Rs.1600-2660 (PR). Consequent to CAT judgment in OA 1288/2004, applicants of the OA only have been granted the next pay scale of Rs.2000-3200. The Government has so far not upgraded the pay scale of DEO 'D' from Rs.1600-2660 to Rs.2000-3200 across*

the board. Ministry of Finance was also consulted in this connection, from time to time. It is, therefore, incorrect to say that DEO 'D' and STA are working on the same pay scale. Regarding the proposal of revision of pay scale of STA having been initiated in MoD, it is mentioned that cadre restructuring exercise requires in-depth study of the organisation and inter ministerial consultation and it takes considerable time. The likelihood of the exercise in terms of outcome and time can also not be predicted. The anomalies which have arisen because of those DEO 'D' who were the applicants in OA 1288/2004 getting the same pay scale as that of STA, have been referred to the Sixth Central Pay Commission.

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10. *Whereas, the STA are in the pay scale of RS.2000-3200 and their promotional post JRO are in the scale of Rs.2000-3500. If the demand of STA to upgrade their scale to Rs.2375-3500 is agreed to, the same will be unfair to JRO who are at the pay scale of 2000-3500 and will have a cascading effect inviting similar demands from the employees in the higher grades of the entire cadre, which will create an imbalance in the organisation. Further, the pay scale of Rs.2375-3500 does not exist in any grade in the hierarchy as may be seen from the Table at Para 9 above.*

5. The petitioners challenged the order dated August 16, 2007 by filing O.A No.298/2000. It is the contention of the petitioners that since Technical Assistants, who were re-designated as DEO Group D and which is a feeder post to the STA, pay scale of petitioners must necessarily be higher to the pay scale of ₹2000-3200 i.e. ₹2375-3500. It was also their contention that in Signal Intelligence Directorate and Armed Forces Headquarter, Inter Service Organizations, under the Ministry of Defence, STAs & Statistical Investigators (Programmers) are getting the same pay scale in the past, pay

parity should be extended to the STAs. In other words, Programmers and STAs who were placed in the scale ₹1640-2900 as on January 01, 1986, revised to ₹2000-3200 was further revised qua programmers to ₹2375-3500, whereas the STAs are still continuing at ₹2000-3200. It was also the case of the petitioners that their functions, duties and responsibilities are superior and higher than the Programmers, despite that they are placed in a lower pay scale.

6. The case of the respondents before the Tribunal has been that implementation of an order passed by the Tribunal in O.A No.1288/2004 has resulted in an anomaly, in as much as the applicants in the O.A No.1288/2004 have been granted the pay scale of ₹2000-3200, which is identical to the scale being given to the STAs and if the scale as sought for by the petitioners is granted, it would have cascading effect and further litigation from Junior Research Officers and Research Officers in the S.I Directorate. Agreeing with the respondents the Tribunal had observed as under:-

“We observe that the Respondents have clearly brought out two facts in their arguments and written submissions. Firstly, the decision of the Tribunal in OA 1288/2004 having been fully complied with by the Government for the Applicants of the said OA, they (DEO- ‘D’/ TA) are getting pay scale of Rs. 2000-3200 w.e.f. 01.01.1986. The Respondents admit that “This change in Pay scale of DEO ‘D’s who were applicants of the OA under reference has however disturbed the entire cadre of SI Dte. Now the said DEO ‘D’s which is the feeder post of STAs are drawing the same pay scale as that of STA. It was an oversight on the part of this department that this repercussion could not be conveyed to the Hon’ble CAT. Though the Respondents blame the Applicants in OA 1288/2004 to have misled the Tribunal

by “hiding the fact” that the pay scale requested was that of their Promotional post (STA), the Respondents in our opinion, have not placed their views and factual position properly before this Tribunal. Of course, we find, as admitted by the Respondents, that the error has come in due to both the Applicants and Respondents in the referred OA. In view of the judicial propriety, we refrain to go beyond what has been noted by us herein. The Second aspect is that the Posts of JRO and RO are promotional posts of STAs. The pre-revised pay scale of JROs is Rs. 2000-3500 and that of RO is Rs. 2200-4000. The prayer of the Applicants – STAs in the present OA is for a pre-revised pay scale of Rs. 2375-3500. The Respondents submit that “The minimum of the pay scale of Rs. 2375-3500, demanded by the applicants, if granted, is higher than that of JRO (Rs. 2000-3500) and RO (Rs.2200-4000), which are the two higher/promotional posts of STA and as a consequence, another set of Court cases will likely to be filed by those JROs and Ros.” This, in our opinion, will open up avoidable litigations due to the cascading impact on the higher posts and their pay scales concerned. We find there is strong logic and rationality in the above 2 points.

7. Finally while dismissing the O.A filed by the petitioners the Tribunal has concluded as under:-

“In view of the facts and circumstances of the case considered and analysed within, we find that (I) the duties and responsibilities of the STAs and those of the SI are different and not comparable for the purpose of pay scales, (ii) the post of JRO and RO are promotional and supervisory posts for the STA and as such STA cannot draw higher scale of pay than that of both JRO/RO, and (iii) the pay anomaly already created for some of the TAs getting pay scale of STAs cannot be the ground to create further anomalies. In the result, we come to the considered conclusion that the Applicants are not entitled to the scale of RS. 2375-3500 with effect

from 01.01.1986. Therefore, the Original Application being devoid of merits is dismissed. No costs.”

8. Ms.Jyoti Singh, learned Senior Counsel appearing for the petitioners would submit that the Tribunal had not adjudicated the issue of anomaly raised by the petitioners pertaining to the pay of feeder post i.e. DEO Group ‘D’ and the promotion post of STA on which the petitioners are working. According to her, in view of the Full Bench Judgment of the Tribunal in M.V Rao’s case (supra), placement in the same pay scale would amount to inequality and arbitrary. She submits that the respondents were required to remove this anomaly.

9. We note that while rejecting the claim of the petitioners the Tribunal has gone into the aspects of the duties and responsibilities of STAs and Statistical Investigator/ Programmer and held that the doctrine of equal pay for equal work is not applicable. That apart the Tribunal has gone into the aspect that the grant of pay scale of ₹2375-3500 would entail petitioners’ drawing a higher scale than the holders of the promotion post of JRO/ RO, which is impermissible.

10. We agree with the conclusion drawn by the Tribunal on the aforesaid two issues. The law is well settled that the evaluation of duties and responsibilities of different posts had to be carried out by the expert bodies and the court must act with restraint in such matters, [referred (2010) 5 SCC 225 State of West Bengal vs. West Bengal Minimum Wages Inspector Association].

11. But the Tribunal had to answer the issue of anomaly arising because of grant of scale of ₹2000-3200 to the DEO Grade ‘D’. Interestingly, a perusal of para No.8 of the order dated August 16, 2007 passed by the respondents and which has been reproduced above would reveal that the

proposal for revision of pay scale of STAs have been initiated in the Ministry of Defence and as the cadre restructuring exercise required in depth study of the organization and inter-ministerial consultation was taken up, but was consuming time. The respondents also acknowledged the fact that the anomalies which have arisen because of DEO 'D', getting the same pay scale as that of STA, have been referred to the 6th Central Pay Commission.

12. In view of what has been referred by the respondents in para No.8 of their order dated July 16, 2007, nothing more was required to be adjudicated by the Tribunal except to call upon the respondents to clarify as to whether the anomaly referred has been removed. Regrettably, the impugned order does not reflect such an information being sought for.

13. The claim of the petitioners has been for grant of scale of ₹2375-3500 with effect from January 01, 1986 i.e. the date from which the benefits of the 4th Central Pay Commission were given. The anomaly may have existed under the 4th Central Pay Commission. After the 4th Central Pay Commission, two more Central Pay Commissions have been constituted and recommendations given and implemented. If anomaly persists, surely the petitioners are right in saying that the grant of same scale for feeder and promotion post amounts to treating unequals as equals, as such arbitrary, violating the provisions of Article 14 & 16 of the Constitution of India.

14. This aspect having not been considered by the Tribunal, we feel that the justice would be met if the matter is remanded back to the Tribunal, calling upon it to adjudicate the issue of anomaly arising because of grant of same pay scale to DEO Grade 'D'. For this purpose, the Tribunal may allow the parties to file necessary pleadings bringing on record the latest position and on completion of such pleadings the Tribunal shall adjudicate the issue limited to the extent stated above as expeditiously as possible, preferably

within a period of six months from the date of receipt of this order. The order dated April 30, 2009 passed by the Central Administrative Tribunal in Original Application No.298/2008 is set aside and said O.A is restored for fresh adjudication.

15. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 20, 2013
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