

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

Decided On: 12.11.2014

+ WP(C) No.5449/2012

B.B. GARG & ORS.

..... Petitioners

Through: Mr. Shankar Raju & Mr. Nilansh Gaur,
Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC for
Respondents No.1 to 4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. In these writ proceedings under Article 226 of the Constitution of India, the Petitioners challenge an order of the Central Administrative Tribunal ("CAT") No. 1542/2008 dated 27.07.2011. The Petitioners had sought for a declaration in terms of Para 81.17 of the Vth Central Pay Commission("V-CPC") recommendations and the Office Memorandum (OM) No. 11025/7/97-ISS-B dated 30.06.1998 of the Ministry of Planning and Programme implementation, Department of Statistics that *inter alia* they were entitled to upgraded

pay-scale in respect of the statistical posts in the scale ₹ 1400-2300 to the scale of ₹ 5000-8000.

2. The facts are that the Petitioners are presently working as Statistical Investigator Grade-IV with the National Sample Survey Organization (FOD), Central Ministry of Health and Family Welfare/CWC. On 21.10.1997 they were asked to exercise their option for fixation of pay in view of the V CPC report. Since their duties and responsibilities were identical to the incumbents in the post of IMD/NSSO, they exercised their option for the newly upgraded replacement scale of ₹ 5000-8000.

3. On 15.07.1999, the Respondents issued an OM directing the grant of upgraded scale of ₹ 6500-10500 to statistical functions posts and on 05.08.1999, the upgraded replacement scales to the statistical post holders in Department of Health services was granted. On 26.08.2004 the Respondent issued the integrated feeder list in which the scale of ₹ 4500-7000 was reflected as the replacement scale for the Petitioners instead of the replacement scale of ₹ 5000-8000. After representing to and reminders being given to the Respondents (on 19.07.2005 and 08.08.2005 respectively)-seeking the replacement scale of ₹ 5000-8000, on 22.03.2006 -the Petitioners received an O.M from the Respondents stating that since they were holding the posts of Senior Computer in the CWC, under the M/o Water Resources and that since the period for which upgraded scale has been demanded related to the service rendered in CWC, prior to April 2005, the CWC was to process the matter.

4. Aggrieved by this, the Petitioners filed OA No. 1552 of 2006 in the CAT, which on 03.09.2007 directed the Respondents to dispose the representations of the Petitioners. Following this, on 08.11.2007, the Respondents issued an OM which denied the claims of the Petitioners.

5. Aggrieved by this denial of the pay scales, the Petitioners filed OA NO. 1542/2008 before CAT. The CAT, by its impugned order dismissed the application on the following grounds. It was held, firstly that the Petitioners being Senior Computers were feeder grade to the Statistical Asstt./Professional Asstt. (Stat.) of CWC who were in the pre-revised scale of ₹ 1400-2600 and were already in the upgraded scale of Rs. 5000-8000. Thus upgrading the scale of the Petitioners would tantamount to the promotional post and that there was no previous instance where Senior Computers were directly promoted to Senior Statistical Assistant. It was secondly held that the V CPC recommendations -in para 81.17 stated that the posts of Junior Investigator/Statistical Assistants so far as pay-scale of ₹ 1400-2300 was concerned had to be upgraded to ₹ 5000-8000. No mention of the post of the Senior Computer has been made and hence the question of equivalence of the Petitioners with that of the Junior Investigator/Statistical Assistant lies within the competence of the Government. It was thirdly held that denial of upgraded scale as recommended by the V CPC to the petitioners was not discriminatory and violative of Articles 14, 16 and 21 of the Constitution as the posts that were granted the upgraded scale were in different departments and the recruitment was not done centrally. Further, the question of

equivalence of the Petitioners with that of the incumbents of similar posts in other departments with respect to their functions and duties lies within the competence of the Government.

6. The Petitioners contend that the scale of ₹ 1400-2600 did not exist in the hierarchy of the promotional posts in the cadre of CWC/MOWR and that the same was erroneously upgraded by CAT Order No. 177/1988 dated 13.02.1992. Further, it is argued that the CAT failed to appreciate the fact that the pay-scale ₹ 1400-2600 merged with the scale of pay S-9 as shown by V-CPC by DOP&T OM No. AB-1410/2/97 Estt. (RR) dated 25.05.1998 and stood upgraded to ₹5500-9000 by V CPC which was the promotional scale of Senior Computers. Contending that it was never disputed that the Petitioners were holders of posts assigned with statistical functions and were included in the Subordinate Statistical Service (SSS), it was submitted that denial of the pay scale would result in an incongruous situation where disparity within the same service, containing the same hierarchy of posts, with common seniority would be brought about. It is also contended that the functions, responsibilities and the qualifications of the Petitioners and the Junior Investigators are identical.

7. The respondents argued that the order of the CAT is well reasoned and does not call for interference. Since the petitioners were holding different category of posts in a separate department, their claim was correctly rejected, more so in view of the V CPC recommendation nowhere requiring up-gradation of their pay scales at the level demanded by them in the proceedings.

Analysis and Conclusions

8. This Court notices that para 81.17 of the V CPC reads as follows,

“81.17. A large number of posts of Junior and Senior Statistical Investigators in the scales of Rs.1400-2300 and 1640-2900 are spread over different Ministries and offices of the Government of India. We observe that some of these posts are isolated and the chances of promotions for the incumbent in such cases are very bleak. We recommend that all such posts with statistical functions be constituted into a subordinate statistical service and all recruitment to the ISS Cadre Controlling Authority. All posts of Junior Statistical Investigator in the scale of Rs.1400-2300 be upgraded and given the replacement scale of Rs.1600-2660. All Junior Statistical Investigators/Statistical Assistants in the scale of 1400-2300 will henceforth be called Statistical Investigators Grade-II. All posts of Senior Statistical Investigators/Assistants at present in the pay scale of Rs.1640-2900 may be given the replacement scale of Rs.2000-3500 and be called Statistical Investigators Grade-I. At a level of Statistical Investigator Grade-II, recruitment may be taken up with graduation in statistic as the minimum qualification. The entrants in this scale would move through the replacement scale of Rs.1640-2900 and Rs.2000-3500 in a time bound manner. Post Graduation may be made the minimum qualification for entry to 50% of the post of Statistical Investigator Grade-I. The entrants to this level will move through the replacement scale of Rs.2375-3750 and the entry scale of ISS Group A in a time bound manner”.(emphasis supplied)

9. The pay scales which existed before recommendations of V-CPC in respect of various posts were as follows:

<u>Post</u>	<u>Pre-revised scale</u>	<u>Revised scale</u>
1. Senior Professional Asstt. (Stat)	₹1640-2900	₹5500-9000

2. Statistical Asstt./ Professional Asstt./(Stat.)	₹1400-2600	₹5000-8000
3 . Senior Computers	₹1400-2300	₹4500-7000
4. Junior Computers	₹950-1500	₹3050-4590

10. There is no dispute about the fact that the Petitioners were working as Statistical Investigators Grade IV with the NSSO (FOD); Ministry of Health and Family Welfare and CWC in the pre-revised in the scale of ₹1400-2300. The Ministry of Planning & Programme Implementation, Department of Statistics, issued OM dated 30.06.1998 in relation to grant of upgraded pay scales to the holders of statistical function posts in Group B and C. That O.M. stated that Ministries/ Departments would take necessary steps to upgrade the scales of various categories of statistical post holders mentioned therein w.e.f. 01.01.1996. It was further stated that ₹5000-8000 was to be upgraded replacement scale of the pre-revised scale of ₹1400-2300. All Ministries/ Departments, holders of statistical function posts in the scale of ₹1400-2300 were granted replacement scale of ₹5000-8000; these scales were not however granted in CWC/ Ministry of Water Resources Development (MOWR) and the Petitioners were denied the same w.e.f. 01.01.1996.

11. Now, the Office Memorandum dated 30.06.98 -of the Nodal Ministry for Statistical Service, i.e the Union Ministry of Planning & Programme Implementation stated- in paragraph 4 that the Ministry of Finance (Department of Expenditure) agreed for the grant of upgraded scale of pay w.e.f. 01.01.1996 for Group “B” & “C” statistical function posts mentioned there subject to the condition that the

administrative Ministries/Departments of these posts agree to recommended changes in RRs to the extent of direct recruitment and educational qualification etc. The CWC treated the posts of Statistical Assistants/Prof. Assistant (Statistics) in the scale of ₹1400-2600 at par with Junior Investigator and granted the normal replacement scale of ₹5000-8000 which was in any case equivalent to upgraded scale recommended by the V CPC for the posts of Jr. Investigator. That ministry however, did not agree to grant the scale of ₹5000-8000 to Senior Computers as in its opinion it would have resulted in an anomalous situation of promotional and feeder posts being in the same scale. The Nodal Ministry which issued the OM dated 30.06.98 agreed with this view.

12. The CAT held that the posts were in different Ministries/Departments and recruitment was not through a central mechanism. It therefore concluded that the claim of equality of pay scale or educational qualifications, should not *ipso facto* result in equivalence. It was held that the applicants had their own perceptions as regards identical functions and responsibilities:

“but in our opinion this lies within the competence of the government who have better idea about the functions and the duties of posts in different Ministries/Departments. In the absence of any specific recommendation of V CPC or specific order relating to Senior Computers in CWC, such equivalence can not be presumed especially when the organisation in consultation with their administrative Ministry and the nodal Ministry for Statistical Service has taken a considered decision in the matter in view of relevant facts and circumstances.

13. As it would appear from the extract of the V-CPC recommendations,

“All posts of Junior Statistical Investigator in the scale of Rs.1400-2300 be upgraded and given the replacement scale of Rs.1600-2660. All Junior Statistical Investigators/Statistical Assistants in the scale of 1400-2300 will henceforth be called Statistical Investigators Grade-II.”

14. The relevant portions of paragraphs 4 and 5 of the O.M. dated 30th June, 1998 read as follows:-

"4. It will be seen from the above that the Implementation Cell of Ministry of Finance (Department of Expenditure) have agreed for the grant of upgraded scales of pay w.e.f 1.1.1996 to the following Group 'B' and 'C' statistical function posts in different Ministries/Departments subject to the condition that the administrative Ministries/Departments of these posts agree in principle to the recommended changes (as recommended by the 5th CPC) in the recruitment rules to the extent of direct recruitment and the educational qualifications , etc. and amend them, with the approval of the competent authorities thereafter:-

<i>Post</i>	<i>Pre-revised Scale of Pay</i>	<i>Normal Replacement Scale of pay</i>	<i>Upgraded replacement scale of pay</i>	<i>Para of Fifth CPC's report</i>
<i>1. Supdt. FOD</i>	<i>1640-2900</i>	<i>5500-9000</i>	<i>6500-10500</i>	<i>81.15</i>
<i>2. A.S. FOD</i>	<i>1600-2660</i>	<i>5000-8000</i>	<i>5500-9000</i>	<i>81.16</i>
<i>3. Investr.FOD</i>	<i>1400-2300</i>	<i>4500-7000</i>	<i>5000-8000</i>	<i>81.16</i>
<i>4. JI/Invstr. /Stat. Asstt. etc</i>	<i>1400-2300</i>	<i>4500-7000</i>	<i>5000-8000</i>	<i>81.17</i>
<i>5. S.I./Sr. Stat.Asstt. Etc.</i>	<i>1640-2900</i>	<i>5500-9000</i>	<i>6500-10500</i>	<i>81.17</i>

5. The matter has been reconsidered by the Department in the light of the observations/advice of the Implementation Cell of the Department of Expenditure (referred to above) and it has been decided to grant the upgraded scales of Pay in

respect of the categories of posts as stated in para 4 above w.e.f 1.1.1996. The Ministries/Departments are accordingly requested to take necessary action to upgrade the scales of pay of the various categories of statistical post holders (as mentioned above w.e.f 1.1.96 (along with arrears of pay) subject to the condition referred to in para 4 of this O.M."

15. The narrow ground of CAT's rejection of the Petitioners' application was that the feeder and promotional grades would have the same scales. Now, this position is consequential and inevitable when merger of different pay scales is recommended. The respondents, while issuing the OM was aware of it, and in fact required alignment of recruitment rules, through amendment. The only "condition" relied on by CAT, spelt out in the letter/ OM of 30-6-1998 is that:

"Implementation Cell of Ministry of Finance (Department of Expenditure) have agreed for the grant of upgraded scales of pay w.e.f 1.1.1996 to the following Group 'B' and 'C' statistical function posts in different Ministries/Departments subject to the condition that the administrative Ministries/Departments of these posts agree in principle to the recommended changes (as recommended by the 5th CPC) in the recruitment rules to the extent of direct recruitment and the educational qualifications, etc. and amend them..."

16. Concededly, the Subordinate Statistical Service was constituted; the Petitioners are entitled to be considered in terms of Rule 8 (future maintenance of the service) of the Rules, framed under Article 309 of the Constitution of India, for appointment as members of that service. In such capacity, they would be eligible for due consideration- at a later stage to the Indian Statistical Service. The inaction or reluctance of the concerned ministries in this case- for the sole reason that the up-gradation would result in feeder and promotional grades securing the

same pay scale, is illogical. Firstly, the condition is not the one cited- the condition spelt out in the OM is to accept the “*recommended changes*” subject to condition of amending the rules to: “*the extent of direct recruitment and the educational qualifications , etc. and amend them,*” The obstacle cited by the respondents, in the opinion of the court, is insubstantial considering that the same fact situation would have prevailed in other ministries where, however, pay-scale up-gradation was granted. Such situation would always be the consequence of pay scale merger in a normal hierarchy of posts within a government department. Yet, that cannot be a deterrent to the grant of pay scales which otherwise two sets of employees might be entitled to.

17. The executive “free play in the joints” in devising pay revisions was explained by the Supreme Court in the following passage in *Secretary, Finance Department & Ors. v. West Bengal Registration Service Association & Ors.* 1993 Supp (1) SCC 153 where too the scope of judicial review in such decisions was spelt out:

"We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the pay commissions, etc. But that is not to say that the court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary state action or inaction. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want

of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broadbanding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalization of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasize that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial secretary who had strongly recommended a

substantial hike in the salary of the sub-registrars to the second (state) pay commission found it difficult to concede the demand made by the registration service before him in his capacity as the chairman of the third (state) pay commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and court's interference is absolutely necessary to undo the injustice."

18. Several decisions of the Supreme Court have now declared that the principle of equal pay for equal work means parity in pay scales only when there is "wholesale identity" of the work and nature of the posts involved. In the present case, it is not the case of the respondents that such identity does not exist; their only *rationale* for denial of pay parity is that whereas in other departments – in relation to the same kind of posts carrying same statistical functions- pay parity is possible and can be granted, in the CWC and the other departments where the petitioners work, the pay hierarchy – in terms of feeder and promotional posts- would be disturbed. But that is the inevitable consequence of pay merger and consequent nomenclature change. In these circumstances, the reasons, for denial of up-gradation of pay to the petitioners are not justified.

19. For the foregoing reasons, the petition has to succeed; it is accordingly allowed. The relief claimed in the application filed by the writ petitioners in OA 1542/2008 shall be given to them. In this regard, the respondents are directed to grant the revised pay scales, on notional basis for the period when others were entitled to it, till 01-01-

2003- i.e. three years before the first application O.A. No.1552 of 2006 filed by them (which includes notional increments in the revised upgraded pay scale of ₹ 5000-9000) and arrears of actual differential pay scales with effect from 01-01-2003. Consequential pay revision orders and pay arrears shall be revised and disbursed, within eight weeks from today. The impugned order of CAT shall accordingly be set aside; the writ petition is allowed in these terms.



**S. RAVINDRA BHAT
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

NOVEMBER 12, 2014