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

+ W.P.(C) 3717/2016

% Date of Decision: 03.05.2016

KAPIL KUMAR SETIA AND ORS

..... Petitioners

Through: Ms. Jyoti Singh, Senior Advocate
with Mr. Padma Kumar and Mr.
Amandeep Joshi, Advocates

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Ruchir Mishra with Mr.
Mukesh Kumar Tiwari, Advocats
for UOI

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J

1. This petition impugns the order of the Central Administrative Tribunal (CAT) dated 05.08.2015 in O.A. No. 701 of 2013 declining the petitioners' prayer for grant of pay scale of Rs.4500-125-7000 with effect from 01.01.1996 at par with the Lower Division Clerks (LDC) of District and Sessions Courts, Delhi and to place them in PB-1 (5200-20,200) with Grade Pay of Rs.2800/- (under the 6th Central Pay Commission).

2. The petitioners are employed in the Central Administrative

Tribunal, Principal Bench, New Delhi, under the administrative control of Department of Personnel & Training, Government of India. At the relevant time they were working as LDC's.

3. The petitioners' representations dated 13th October and 19th November, 2011 for grant of pay scale of Rs.4500-125-7000 with effect from 01.01.1996 at par with the LDCs working in the office of District & Sessions' Court, Delhi, was rejected vide memorandum dated 27.07.2012 by the Chairman of the Tribunal. The petitioners' claim is that they should be treated at par with the LDCs working in the District & Sessions Courts at Delhi, instead of their counterparts in CSS/CSSS/CSCS. The memorandum rejecting the said request reads:

“Memorandum

With reference to their representation date 13.10.2011 & 19.11.2011 for grant of pay scale of Rs.4500-125-7000 w.e.f. 01.01.1996 at par with the LDCs of District & Sessions Courts in Delhi pursuant to judgment of Hon'ble Supreme Court dated 09.02.2011, the following LDCs working in the Principal Bench of Central Administrative Tribunal are hereby informed that taking into account the pay scales for various posts in District & Sessions Court and promotional hierarchy vis-a-vis their counterparts in CAT and also the fact that there is a historical parity of pay scales in respect of employees of CAT with their counterparts of CSS/CSSS/CSCS, Hon'ble Chairman, Central Administrative Tribunal has been pleased to direct that the Central Administrative Tribunal will continue to claim parity for scales in respect of all the posts including LDC in CAT with the counterparts in CSS/CSSS/CSCS.

(L.R. Sharda)

(E)”

4. Ms. Jyoti Singh, learned Senior Advocate for the petitioners contends that historically the LDCs working in the Tribunal and the District & Sessions Court at Delhi were drawing the same pay scale as per the recommendations of the Third, Fourth and Fifth Pay Commissions as well as in the 6th Pay Commission, before the judgment of this Court in ***Mirza Zahid Beg & Ors. v. Sunion of India & Ors.*** WP(C) 484/1988 which had directed grant of Rs.4500-125-7000 pay scale to the LDCs of the District & Sessions’ Court, Delhi. Therefore, it is historical proven that the two sets of employees were doing identical work. The pay parity should be maintained on the principle of “equal pay for equal work”.

5. The Tribunal was of the view that the genesis and substratum of the petitioners’ claim for higher pay is the Delhi High Court judgment in ***Mirza Zahid Beg & Ors.*** (supra) and not discernible and invidious discrimination in the government policy. Their counterparts in CSS/CSSS/CSCS with whom parity in their pay has been maintained since inception of their cadre, are getting the same pay. The Tribunal reasoned as under:

“12. It would be clear from what has been recorded above that fixation of pay is an issue not to be interfered with unless there is hostile discrimination. It is for the government to take appropriate decision in this regard. In Union of India Vs. P.V. Hariharan, 1997 (3) SCC 568, it could be held thus:

“.....over the past few weeks, we have come across several matters decided by Administrative tribunals on the question of pay scales. We have noticed that quite often the tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales.”

13. Similarly in Union of India Vs. Makhan Chand Roy, AIR 1997 SC 2391, it could be held thus:

“2.....The Tribunal compared the earlier pay-scales of Auxiliary Nurses and Midwife with the earlier pay-scales of the respondent and thought it fit to grant the same hike in the pay-scale which was made available under the Revised Pay Rules to Auxiliary Nurses and Midwife to respondent also. In our view that exercise was totally unauthorised as it amount to taking a policy-decision which was within the domain of the authorities themselves who are the authors of the Revised Pay-Scales.....”

14. If the pay scale of LDCs in CAT is disturbed, it will have immediate repercussion on the pay scale of UDCs and so on. It will be an endless chain reaction. Therefore, we are of the considered view that this Tribunal cannot move into the shoes of the government and the Pay Commissions and determine what is the right pay scale. Moreover, VII Pay Commission is considering the pay scale matters and would perhaps finalize its report soon.”

6. We are not persuaded to interfere and differ with the aforesaid reasoning and the conclusion of the Tribunal. Pay fixation is a complex matter and falls within the domain of the executive. This extensive exercise involves quite a few factors which have to be considered. It is not a mechanical exercise and necessitates assessment of qualitative differences in the nature of work discharged as regards duties, liabilities and responsibilities. The Tribunal has pertinently referred to the dicta of the Supreme

Court in (i) *State of Haryana and anr. Vs. Tilak Raj and ors.*, 2003 (5) SCALE 251, (ii) *S.C. Chandra and ors. Vs. State of Jharkhand and ors.*, 2007 (10) SCALE 209; and (iii) *State of Punjab and anr. Vs. Surjit Singh and ors.*, 2009 (11) SCALE 149, which elucidate that the doctrine of 'equal pay for equal work' cannot be applied even if the functions are the same, for the responsibilities etc. may differ. Pay determination must be left to be evaluated and determined by an expert body. Ergo, the applicability of the principle of 'equal pay for equal work' which requires considerations of various dimensions of a given job is best left to be evaluated and determined by an expert body.

7. We note that the decision of this Court in *Mirza Zahid Beg & Ors.* (supra) conferred no right upon the petitioners to seek a higher pay. The petitioners' pay has been fixed in the context of historical parity of pay scales with their counterparts of CSS/CSS/CSCS. The petitioners' pay has been linked with Central Government employees and not with those working in the judiciary under similar designation, in the District & Sessions Court, Delhi. Comparison between these two services will be improper and misplaced. Furthermore, the petitioners belong to an All India Service with identical pan-India pay scales. The petitioners have not been able to show any case of hostile discrimination with their counterparts in the government with whom their pay scales have historical equivalence and uniformity.

8. For the aforesaid reasons, we are not inclined to interfere

with the impugned order. The petition is without merit and it is accordingly dismissed.

NAJMI WAZIRI, J

SANJIV KHANNA, J

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