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

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Judgment reserved on April 20, 2017
Judgment pronounced on June 05, 2017

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W.P (C) No. 16726/2006

BABU RAM

..... Petitioner

Through Mr. Ashish Negi and Mr. Praksh
Kumar Singh, Advocates for the
Appellant

versus

U.O.I & ORS.

..... Respondents

Through Mr. Ripu Daman Bhardwaj, CGSC for
R-1/U.O.I
Ms. Neelam Singh, Advocate for
GNCTD/R-2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. Challenge in this writ petition is to order dated 08.05.2006 passed in O.A 2115/2005 whereby the Principal Bench of the Central Administrative Tribunal (in short 'the Tribunal') refused to grant the appellant herein a higher replacement pay scale of Rs.5000-8000 w.e.f 01.01.1996 to the post of Statistician which was the post held by the petitioner at that time in terms of the recommendation of the 5th Central Pay Commission (in short 'CPC') and also declined the petitioner the pre 01.01.1996 pay scale parity between the post of Head Clerk and Statistician and consequential benefits arising

therefrom.

2. The facts which led to the filing of the present petition are that the petitioner had joined Kalawati Saran Children's Hospital (in short 'KSCH') and he was promoted from the post of LDC to the post of Medical Record Technician (in short 'MRT') in the year 1988. There were two channels of promotion available to LDCs in KSCH, Administrative and Statistical, which are as follows:-

Sl.no.	Administrative	Statistical	Pay scale attached
1.	U.D.C	MRT	Rs.1200-2040
2.	Head Clerk	Statistician	Rs.1400-2300
3.	Office Superintendent	Medical Record Officer	Rs.1600-2900
4.	Administrative Officer	-	Rs.2000-3500

3. The petitioner got two promotions in the Statistical Stream, first to the post of MRT and second to the post of Statistician. Thereafter the 5th CPC recommended the replacement scale of Rs. 4500-7000 for the post of Statistician in the Statistical Stream and of Rs. 5000-8000 for the post of Head Clerk in the Administrative Stream.
4. The petitioner then made a representation on 30.06.1998 to the concerned authorities for upgradation of his pay scale of Rs.5000-8000 in line with the recommendations of the 5th CPC. The relief was denied to the appellant by the concerned authority vide letter dated

24.07.2003.

5. The petitioner claimed that since he was eligible for promotion in the Administrative Stream to the position of UDC and then to the post of Head Clerk, he should have been given the upgraded pay scale of Rs.5000-8000. He further contended that prior to 01.01.1996, the post of Head Clerk in the Administrative Stream and Statistician in the Statistical Stream had the same pay scale of Rs.1400-2300. On this ground, he claimed that he should be granted the higher replacement pay scale of Rs.5000-8000 which has been granted to the post of Head Clerk in the Administrative Stream.
6. The appellant filed O.A No. 3020/2003 (hereinafter referred to as 'first OA') before the Tribunal. His first OA was disposed of on 23.07.2004 with the following observations in Para 11:

"11. Having regard to the reasons discussed above, in the facts and circumstances of the present case respondents have to consider granting the applicant the replacement scale of Rs.5000-8000 as available to the Head Clerk in KSCH or has been made available by different Ministries/Departments to the post of Junior Investigator/Investigator/Statistical Assistant etc. It shall not be necessary for the department to prescribe the qualification of degree in statistics for the post of Statistician held by the applicant on promotion. Although, if recruitment rules are modified to bring in the mode of direct recruitment in addition to that of promotion to the post of Statistician, the prescription of education qualification would be restricted for direct recruitment only. However, the pay scale of the post by either mode of recruitment shall be the same and not different, i.e. Rs.5000-8000 as available for equivalent posts in the administrative stream of the respondent organisation or in the post of Junior Investigator/Investigator/Statistical Assistant etc. in other Department/Ministries."

7. The Tribunal disposed of the first OA in terms of the following

directions:-

“12. In result, respondents are directed to consider according the upgraded replacement scale of Rs.5000-8000 to the applicant in the post of Statistician with consequential benefits, keeping in view the observations made above within a period of three months from the date of communication of these orders.”

8. Pursuant to this order passed in the first OA, the petitioner's case was considered and rejected vide letter dated 12.05.2004 by the respondent. The reason given for rejection was that the 5th CPC had recommended a higher pay scale of Rs.5000-8000 to the post of Statistician in the streams in which the feeder cadres for the posts are filled up entirely by direct recruitment for which a minimum qualification is a Degree with Statistics. The petitioner was promoted to the post of Statistician from the post of MRT and not by direct recruitment. Moreover the petitioner did not possess the minimum qualification of a Degree with Statistics. It was also pointed out in the letter that there are a number of posts similar to that of Statistician without requiring the Degree of Statistics available in the Ministry which are placed in the pay scale of Rs.4500-7000.
9. After this rejection, the petitioner filed a Contempt Petition in the first OA alleging that the order dated 23.07.2004 has not been complied with by the respondents. The same was disposed of on 28.06.2005 giving liberty to the petitioner to file a substantive petition if he is aggrieved by the order of rejection of his claims. This led to the filing of OA 2115/2005 by the petitioner which was dismissed vide order dated 08.05.2006. The dismissal of second OA led the petitioner to file the present petition.

10. Mr. Ashish Negi, learned counsel for the petitioner has contended that the Tribunal in the first OA had mentioned that prescribing of educational qualification for the post of Statistician would be restricted to direct recruits only and would not apply to those who have been promoted to the said post and that both direct recruits and promotees should be given the same pay scale as available to equivalent posts in the Administrative Stream of the respondent organisation. He, therefore, submits that the fact that the petitioner does not possess a degree with Statistics becomes immaterial and he is to be treated at par with those direct recruits who do possess such a degree.
11. The learned counsel for the petitioner has also contended that the concerned Law Officer, DGHS had opined in his note dated 18.10.2004 submitted to the DGHS for implementation of the order of the Tribunal in the first OA. He opined that there is no error or illegality in the said judgment and the grounds for filing an appeal to the High Court are of a weak nature coupled with the fact that the respondents actually did not opt to file an appeal against the first OA which makes this order final and binding upon the respondents.
12. Learned counsel for the petitioner has further urged that there cannot be two sets of pay scales for the same post. He argued that the 5th CPC gave the pay scale of 5000-8000 to Statisticians and therefore he is being unfairly and arbitrarily denied the benefit of the higher pay scale.
13. Learned counsel for the petitioner also contended that the amended recruitment rules as notified by the Ministry of Statistics in line with the recommendations of the 5th CPC whereby a degree in Statistics has

been prescribed as an essential qualification for the post of Statistician would apply only to new direct recruits prospectively.

14. Learned counsel for the petitioner submitted that similarly placed incumbents in statistical function posts in other departments have been given the benefit of the higher pay scale while he is being denied the same. This shows the arbitrariness and hostility with which the respondents have treated the petitioner. The higher pay scale of Rs.5000-8000 has also been given to the post of Head Clerk which is a parallel post in the Administrative stream and the feeder post for both the streams is LDC.
15. Per contra, Mr. Ripu Daman Bhardwaj learned Standing Counsel for the Union of India and Ms. Neelam Singh learned counsel for R-2 have contended that the decision not to grant the petitioner the higher pay scale of Rs.5000-8000 is based on the recommendations of the 5th CPC itself which clearly indicate in para no.56.55 that the said pay scale is to be given to the post of Statistician where the feeder cadre post are filled up entirely by direct recruitment for which the minimum qualification is a Degree with Statistics and since the petitioner was promoted to the post of Statistician and did not possess a Degree with Statistics, he is not entitled to the said pay scale.
16. The learned counsel for the respondents have further contended that the petitioner once having chosen his career prospects in a particular stream by accepting his promotions in the same cannot claim the benefits which are not available to the said cadre and stream chosen by him. The petitioner once having chosen the statistical stream cannot claim parity in matters of pay scale with the Administrative stream.
17. Learned counsel for the respondents have submitted that there is no

infirmity in the order of the Tribunal in OA 2115/2005 dated 08.05.2006 whereby the Tribunal has thoroughly considered all the questions involved and agreed with the decision of the DGHS not to grant the petitioner the upgraded pay scale of Rs.5000-8000.

18. We have heard the learned counsel for the parties and gone through the material placed on record.
19. The contentions of the petitioner are primarily based upon the observations of the Tribunal in first OA which have been reproduced hereinabove in Para 4 and 5 whereby the Tribunal agreed with the contention of the petitioner that there cannot be two different pay scales for the same post and directed the respondents to consider granting the petitioner the higher pay scale of Rs.5000-8000 within a period of 3 months.
20. It is clear from a plain reading of the judgment in the first OA that in fact Tribunal merely directed the respondents to consider granting the higher pay scale to the petitioner in line with its observations. Therefore the respondents were free to either grant or not to grant the higher pay scale after taking note of all the relevant considerations. The respondents chose not to grant the petitioner the higher pay scale vide its communication dated 27.05.2005. The contention of the petitioner that the Tribunal had in fact directed the respondents to grant the appellant the higher pay scale is not correct.
21. The petitioner has contended that there cannot be two different pay scales for the same post as the post is filled by both direct recruits and promotees, since the educational qualifications are only prescribed for direct recruits, promotees cannot be denied a higher pay scale as that would be a clear violation of Article 14 of the Constitution of India.

The Hon'ble Supreme Court in ***M. Rathinaswami and Ors. V State of Tamil Nadu and Ors., (2009) 5 SCC 625*** while dealing with the question whether educational qualification can be made a basis of granting a higher pay scale held as under:

“25. However, the question whether the difference in the educational qualifications is sufficient to give preferential treatment to one class of candidates against another, should in our opinion be ordinarily left to the executive authorities to decide. The executive authorities have expertise in administrative matters, and it is ordinarily not proper for this Court to sit in appeal over their decisions unless it is something totally arbitrary or shocking.”

22. The Hon'ble Supreme Court in ***Union of India v. P.V. Hariharan, (1997) 3 SCC 568*** while dealing with the power of the Tribunal to interfere with the recommendation of the appropriate government in granting a particular pay scale held as under:

“5. Before parting with this appeal, we feel impelled to make a few observations. 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. (Emphasis supplied)”

23. The Hon’ble Supreme Court in ***Union of India v. S. Thakur, (2008) 13 SCC 463*** while re-iterating the scope of judicial review of decisions granting pay scales etc. observed as under:

“8. The plea that as restructuring of cadre and redistribution of posts was involved insofar as the Assistant Directors were concerned and therefore the policy decision taken by the State Government to give benefit of upgraded scale to an Assistant Director (Executive) with effect from 1-10-1997 should not have been interfered with by the Tribunal and by the High Court is devoid of merits. There is no dispute nor there can be any, to the principle that fixation of pay and date from which the benefit of revised pay scale would be admissible is the function of the executive and the scope of judicial review of such an administrative decision is very limited. However, it is equally well settled that the courts would interfere with the administrative decisions pertaining to pay fixation and pay parity as well as the date from which the revised pay scales would be made applicable if it is found that such a decision is unreasonable, unjust and prejudicial to a section of the employees. (Emphasis supplied)”

24. The argument of the learned counsel for the petitioner is not based on any sound logic or cogent reasoning as the career prospects in the two streams, Administrative and Statistical, may differ materially depending upon the availability of vacancies and the eligibility conditions for promotion of the post. If the Pay Commission which is an expert body has granted the higher replacement scale to the Head Clerks, then it is not necessary that the pay scales for the post of Statistician in the Statistical stream should also be placed on the same level just because before the date of implementation of the recommendations both the posts were having the same pay scale.

25. The petitioner was promoted to the post of MRT and accepted the same and also waited for his turn for further promotion to the post of Statistician. Thus, he accepted his career progression in the Statistical stream. Now he cannot turn around and claim parity in the matter of promotion and pay scale with the Administrative stream. The career prospects in the two streams i.e. Administrative and Statistical differ materially depending upon the availability of vacancies and eligibility conditions for promotion of that post etc. The petitioner cannot compare his pay scale of Statistician with that of Head Clerk in the Administrative Stream. The replacement pay-scales for the post of Statistician in the Statistical Stream and Head Clerk in the Administrative Stream were granted w.e.f. 01.01.1996 as per the 5th CPC. The responsibilities and duties of both the posts cannot be identical which is the main reason for the respondent not granting parity in pay scale w.e.f. 01.01.1996.
26. As far as the issue of internal noting of the Law Officer of the respondent department is concerned, even if he was of the view that the judgment in the first O.A was correct and the orders should be implemented, it does not amount to a final decision and is only an opinion expressed by him. The Hon'ble Supreme Court in ***Sethi Auto Service Station v. DDA, (2009) 1 SCC 180*** while dealing with the sanctity of internal noting held as under:

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside

exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned. (Emphasis supplied)”

27. The pay scale attached to the post of Statistician (Group ‘C’) was Rs.1400-2300, after the recommendation of the 5th CPC in Para 81.16 and 81.17, all Statisticians in the pay scale of Rs.1400-2300 were to be known as Statistical Investigators Grade-II and the minimum qualification for recruitment to these posts was to be a degree in graduation with statistics. As per para 81.17 of these recommendations a subordinate statistical service is to be constituted as there was earlier little chance of promotion from the post of Statisticians. It is important here to refer to the Office Memorandum dated 14.10.1997 issued by the Department of Statistics wherein in pursuance to the recommendations of the 5th CPC the department with regard to upgradation in respect of Group ‘C’ and Group ‘B’ statistical functional posts stated as under in Para 7:

“7. In view of the position stated above, the Ministry of Agriculture, Ministry of Finance etc. are requested to ensure that the upgradation of scales of pay recommended by the 5th Central Pay Commission in respect of Group ‘C’ and Group ‘B’ statistical function posts including those which are presently recognised as feeder post for promotion to Grade-IV of ISS and other statistical function posts which may form part of Subordinate Statistical Service are not allowed until the Government has taken a decision on the recommendations of the Pay Commission for creation of a Subordinate Statistical Service. Pending a suitable decision on the Pay Commission’s recommendations regarding creation of a Subordinate Statistical Service, the holders of Group ‘C’ and Group ‘B’ statistical function posts (referred to above) are given the replacement scales with reference to their existing scales of

pay (i.e. the ones as accepted by the Government on the basis of the 4th Pay Commission's recommendations)."

28. A reading of this O.M makes it abundantly clear that the upgraded pay scale to the post of Statistician was subject to it being included in the Subordinate Statistical Service. During the course of arguments it was brought to our notice that a Subordinate Statistical Service was constituted and the petitioner's post was not included in the said service as there is no direct recruitment to the post of Statistician and also the minimum qualification is not that of a Degree in Statistics.
29. A combined reading of the recommendations of the 5th CPC especially in Para 81.16 and 81.17 and also of the O.M dated 14.10.1997 reproduced above in Para 25 clearly establishes the higher pay scale of Rs.5000-8000 was to be given only to those posts which were included in the newly created Subordinate Statistical Service, which had a minimum qualification requirement of a Degree in Statistics and where recruitment was not through promotion but through a direct entry.
30. In light of the law discussed above and the facts and circumstances of the case, we find no infirmity in the judgment of Tribunal and accordingly the petition is hereby dismissed.

VINOD GOEL, J.

G. S. SISTANI, J.

June 05, 2017