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

Reserved on: 22nd October, 2019

Decided on: 5th November, 2019

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W.P.(C) 5310/2015

**DIRECTOR, DIRECTORATE OF INCOME TAX (HRD)
& ORS.**

.... Petitioners

Through: Mr. R. Ramachandran, Advocate with
Ms. Lakshmi Gurung, Sr. Standing
Counsel of IT and Mr. Siddharth
Gupta, Advocate

Versus

RAMESH DANG & ORS.

..... Respondents

Through: Mr. Kundan Kumar Lal, Advocate

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. The Directorate of Income Tax (Organisation & Management Services) [DIT (O&MS)], its Director General, its Director, the Secretaries to the Ministry of Finance, Department of Revenue and the Department of Personnel, Ministry of Personnel Grievances, Training and Pension, have filed this petition against an order dated 15th January, 2014 passed by the Principal Bench of the Central Administrative Tribunal (CAT) allowing OA No.2906/2011 filed by the six Respondents, who were all Technical Assistants in the DIT (O & MS) and directing the Petitioners to grant them the pay scale of Rs.6500-10500/- on par with Inspectors of Income Tax,

with effect from 21st April, 2004 and also grant them grade pay of Rs.4600/- in the scale of Rs.9300-34800/- (PB-II) with effect from 1st January, 2008. The arrears were restricted with effect from 1st January, 2006.

2. On 21st August, 2005 the following order was passed by this Court:

“Learned counsel for the petitioner submits that the respondents (Technical Assistants) were drawing higher salary than the Inspectors of Income Tax and Assistants of the Central Secretariat Service in the year 1972. Counsel further submits that this by itself could not have been one of the grounds to grant pay parity to the respondents for the period 2004 to 2006 onwards. It is further contended that the salaries of the Inspectors of Income Tax were upgraded in the year 2004 and salaries of Assistants of the Central Secretariat Service were upgraded in the year 2006 after detailed assessment and on account of their nature of duties and the degree of responsibility. It is contended that the respondents could not have been granted this benefit for the period 2004 to 2006 as their duties and responsibilities were not identical.

Issue notice to the respondents to show cause as to why Rule nisi be not issued, returnable on 20.10.2015. Notice in the stay application as well for the date fixed.

We are also informed that a contempt petition has also been filed before the Tribunal. Till the next date of hearing, operation of the impugned order dated 15.1.2014 passed by Central Administrative Tribunal and further proceedings arising from the contempt proceedings shall remain stayed.

DASTI to the petitioners.”

3. Subsequently, on 26th February, 2018 the Court was informed that the contempt petition filed by the Respondents had been disposed of by the

CAT in view of the above interim order. The application for interim relief was accordingly disposed of.

4. The background facts are that the Respondents are working as Technical Assistants in the DIT (O & MS). Prior to 1st January, 1972 i.e. before the recommendations of the 3rd Central Pay Commission (CPC) became effective, the pay scale of the Respondents was Rs.325-575, whereas that of the Inspectors of Income Tax and Assistants of Central Secretariat Services (CSS) was Rs.210-485. After the 3rd CPC recommendations were implemented, the pay scale of Respondents was revised to Rs.550-900 and that of the Inspectors of Income Tax to Rs.425-800.

5. In terms of the recommendations of the 4th CPC, which was given effect to from 1st January 1986, the pay scales of both the Respondents as well as Inspectors of Income Tax were brought on par at Rs.1640-2900. This parity was maintained even in the 5th CPC and the pay scales were revised for both with effect from 1st January, 1996 to Rs.5500-9000. Even for Assistants of the CSS it was Rs.5500-9000.

6. On 21st April, 2004 the pay scale of the Inspectors was upgraded to Rs.6500-10500. This was the pay scale given to the Assistants of the CSS from 25th September, 2006. However, as far as the Respondents i.e. Technical Assistants were concerned, it continued to remain at Rs.5500-9000.

7. It has been explained by the Petitioners that the above upgradation of the

pay scale of Inspectors of Income Tax to Rs.6500-10500 came about on the recommendation of a High Power Committee to which the issue of revision of pay scale of Inspectors and Officers of the Department of Revenue to be brought on par with Inspectors and Superintendents of Customs and Central Excise was referred. The above change with effect from 21st April, 2004 in the pay scale of Inspectors brought them on par with officers of the CBI and the IB.

8. It has been pointed out by the Petitioners that one reason for the upward revision of the pay scales of Inspectors was that there was an element of direct recruitment to that post through an All India Competitive Examination. However, the mode of recruitment to the post of Technical Assistants as per the applicable Recruitment Rules (RRs) was by promotion, failing which by transfer on deputation. Also, the field of selection on deputation was not limited to Assistants of CSS and Inspectors of Income Tax but also to Head Clerks and UDCs in the lower cadre.

9. A representation was made by the Respondents in October, 2006 for removal of the disparity in the pay scales when compared to the Inspectors of Income Tax. This representation was forwarded to the Central Board of Direct Taxes (CBDT) for its consideration. However, by this time i.e. November, 2006, the 6th CPC already stood constituted. Consequently, by a communication dated 27th November, 2006, the CBDT informed the Respondents that since the 6th CPC already stood constituted, they should submit their memorandum directly to the CPC. However, it appears that the Respondents did not do so.

10. The attempt of the 6th CPC was to reduce the total number of pay scales. Its recommendations which became effective on 1st January, 2006, resulted in the Respondents, Inspectors of Income Tax and Assistants of CSS getting a pay scale of Rs.9300-34800. However, it was noticed that the central recommendation of the 6th CPC regarding clubbing of various pay scales in order to reduce the number had resulted in an anomalous situation for Inspectors of Income Tax and Assistants of CSS. The Government acknowledged this and revised the grade pay from Rs.4200 to Rs.4600 in case of Inspectors of Income Tax and Assistants of CSS by an OM dated 13th November, 2009.

11. In para 3.15 in the present petition it is stated as under:

“3.15 It is worth mentioning that the 6th CPC vide para 2.2.21(v), recommended that on account of merger of pre-revised pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, some posts which presently constitute feeder and promotion grades will come to lie in an identical grade. The specific recommendations about some categories of these posts made by the Pay Commission are included in Section II of Part B. As regards other posts, the posts in these three scales should be merged with the posts in the scale of Rs. 6500-10500 being upgraded to the next higher in the pay band PB-2 i.e. to the grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. In case a post already exists in the scale of Rs.7450-11500, the post being upgraded from the scale of Rs.6500-10500 should be merged with the post in the scale of Rs.7450-11500. This recommendation was accepted by Govt. and notified in Part-B, Section 1 (ii) of the CCS (RP) Rules, 2008.”

12. It is further stated that the Department of Expenditure in the Ministry of

Finance issued an OM dated 13th November, 2009 which prescribed that posts which were in the pre-revised pay scale of Rs.6500-10500 as on 1st January, 2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200/- in PB-II will be granted the grade pay of Rs.4600/- in PB-II corresponding to the pre-revised scale of Rs.7450-11500 with effect from 1st January, 2006. However, the Respondents i.e. Technical Assistants (DOMS) who were in the pre-revised scale of Rs.5500-9000 as on 1st January, 2006 were not covered by the above OM dated 13th November, 2009. They were accordingly extended the normal replacement scale of Rs. 9300-34800 PB-II plus grade pay of Rs.4200/-. This was lower than the grade pay granted to the Inspectors of Income Tax in the pre-revised scale of Rs.6500-10500 with grade pay of Rs.4600/- in PB-II.

13. This was extended subsequently by another OM dated 16th November, 2009 of the Department of Expenditure to Assistants of CSS, (AFHQ), IFS (B) and Railway Board Secretariat Service with effect from 1st January, 2006. It is pointed out that even in the posts of Assistant of CSS there is an element of direct recruitment to the post through an All India Competitive Exam. On the other hand, the post of Technical Assistant was to be filled by promotion failing which by deputation. It is accordingly submitted that the post of Technical Assistant is not covered by the OM dated 16th November, 2009 for grant of grade pay of Rs. 4600/- in PB-II.

14. It is pointed out by the Petitioners that the proposal for upgradation of the pay structure of the Technical Assistants was rejected by the Department of Expenditure by a letter dated 23rd November, 2010. The Respondents then

filed OA No. 2906/2011 in the CAT in August, 2011. Although a plea was taken by the Petitioners herein (Respondents in the said OA) regarding the OA being barred by limitation, that question was apparently not dealt with by the CAT.

15. Turning now to the impugned order of the CAT, the conclusion reached was that the Department of Expenditure failed to appreciate that the question is not one of parity of pay scale but one of an anomaly that required correction. It was held by the CAT in the operative portion of the impugned order as under:

“9. Therefore, in our considered view, the rejection of the claim of the Applicants for the pay scale of Rs.6500-10500 by the Ministry of Finance, Department of Expenditure is highly a mechanical exercise of its powers. We also hold that the issue involved in this case is not parity of pay scale though the Applicants have mentioned so in the prayer clause but from all the correspondence between the Applicants Department and the Ministry of Finance shows that it is a case of anomalous situation created by not increasing the pay scale of the Applicants when the pay scales of the Inspectors of Income Tax and Assistants of CSS have been increased with effect from 22.04.2004 and 25.09.2006 respectively. We, In the above facts and circumstances of the case, allow this OA and quash and set aside the impugned Annexure A-1 letter No.23.11.2010 addressed to the Director, Directorate of Income Tax (Organisation and Management Services) vide UO Note No.15(21)/E.III(B)/2010 dated 12.10.2010 whereby the proposal for upgradation of pay scale has been rejected. Consequently, we direct the Respondents to grant the pay scale of Rs.6500-10500 to the Applicants who are Technical Assistants in Directorate of Organisation and Management with effect from 21.04.2004, i.e., the date from which the Inspectors of Income Tax were granted the said scale by the

Central Board of Direct Taxes. For the same reason, we also direct the Respondents to grant the Grade Pay of Rs.4600/- In the scale of Rs.9300-34800 (PB-2) as in the case of the Inspectors of Income Tax and Assistants of CSS with effect from 01.01.2008 granted vide OM No.F.1/1/2008-IC dated 13.11.2009. However, as regards the payment of arrears are concerned, we restrict the same with effect from 01.01.2006, i.e., the date from which the aforesaid scale has been granted to the Inspectors of Income Tax. We also direct that the Respondents shall comply with the aforesaid directions by passing appropriate orders within a period of two months.”

16. The short question that arises for determination in the present petition is the tenability of the claim of the Respondents that they should be paid salaries and allowances on par with Inspectors of Income Tax.

17. This Court had required counsel for the Respondent to explain to the Court what the functional similarities, if any, were between the Technical Assistants and Inspectors of Income Tax. Counsel for the Respondent has filed the written submissions on 31st October, 2009 setting out the detailed job profile of Technical Assistants and that of the Inspectors of Income Tax in a tabular form as under:

1. To examine basic data relating to work load of the income tax office and update the data if necessary. 2.To verify basic data for accuracy of annual counts/frequencies reported the field offices of income tax department. 3.To prepare organization charts, duty lists, and work distribution charts of income tax office understudy. 4.To assist the assistant director/additional	1. Assistance in search and seizure operations if so directed. 2.Assistance in preparation of replies to parliament questions, reports for C&AG and parliamentary committee etc. 3. Maintenance of daily diary for the work done during day and submission thereof to
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assistant director in running work sample/activity analysis etc during work studies. 5. To prepare job descriptions for systematic analysis of jobs by interviewing the job holders in the office under study. 6. To carry out direct time observation/time study of repetitive jobs during work studies. 7. To undertake Analytical estimation of long cycle jobs, to estimate establish time factors. 8.To prepare workload computations for each job/item of work on annual basis, based on data collected from the office understudies. 9.To discuss with the officers and staff members of the office under studies details of work load calculations and computations. 10.To assist Assistant director/Additional assistant Director (a) In discussions with functionaries of the office understudy (b) in preparation of the study reports (c) in proper upkeep and maintenance of file and records. For carrying out review of the procedures and systems of work • Laying down work/staffing norms • Assisting CBDT in formulation of the action plan for the Income tax Department and its appraisal by regularly monitoring the performance of the field offices vis-à-vis targets set for them. • Monitoring the utility of existing forms and registers office layouts etc. in the Income tax Department. Note: To carry out all above jobs/activities/ work, the technical assistant has to visit various income tax offices spread all over India including remote locations/islands like Andaman Nicobar and Lakshadweep etc.	supervising authority once a week unless called for earlier. 4.Assistance in performance review, action plan and statistical reports to authorities. 5.Assistance in Public relation, taxpayer education and assistance. 6.Assistance in foreign section work. 7.Service of summons/notices if so directed. 8. Work relating to enquiry and surveys, Investigations and related work. 9. Work relating to assessments and related functions, collection of arrear demand, tax recovery. 10. Tax evasion petitions and prosecutions. 11.Work relating to Audit and related functions, TDS and related functions. 12. Assisting office of Chief CIT/CIT/Additional CIT/Joint CIT.
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18. It will straightway be noticed that the job profiles of the two posts are not comparable. A Technical Assistant cannot be expected to replace an Inspector of Income Tax. Based on the job profile, therefore, no case is made out for parity as far as the pay scales are concerned.

19. The educational qualification for the post of Technical Assistants is a bachelor's degree in Commerce/Statistics/Economics/Mathematics. For the post of Inspector, it is a bachelor's degree or the equivalent thereof in any stream. Nevertheless, as the above comparison shows, the scope of the functions of an Inspector are very different from that of the Technical Assistants.

20. The approach of the CAT was simply to go by the fact that earlier the pay scales for the two posts were at par for a short period. In considering this to be a case of 'anomaly' and not one of demand for 'parity' of pay scales, the CAT avoided examining if the principle of 'equal pay for equal work' espoused by the Respondents, would apply in the first place. It was incumbent on the Respondents to have shown how the case for parity of pay scales was made out, notwithstanding the difference in the functional/job profiles in the two posts. This was not a case of a mere anomaly having to be rectified, but that of demand for equating the pay scales of two dissimilar posts.

21. The CAT thus overlooked the clear legal position as explained by the Supreme Court in *State of UP v. J.P. Chaurasia (1989) 1 SCC 121* as under:

"The matter of pay scale does not just depend upon either the nature of work or volume of work done as primarily what is needed to be noticed is evaluation of duties and responsibilities of the respective posts. More often than not, functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance, like the responsibility attached to a particular office. In such cases, it would not be open to the court to consider whether the equation of posts made by the Government or the pay scales accorded to them is right or wrong, as such matters are exclusively within the province of the Government. Perhaps the only question the court can enquire into is whether appropriate policy has been adopted by the Government which does not result in hostile discrimination which is a very narrow and limited area of enquiry. When equation of posts had been done on some basis, the same should not be altered so as to equate with some other post and enhance their pay scales".

22. The position was elucidated succinctly in *S.C. Chandra v. State of Jharkhand* (2007) 8 SCC 279 where was held:

"If posts A and post B have been carrying the same pay scales, merely because the pay scale of post A has been increased that by itself cannot result in increase in the pay scale of post B to the same level. It is entirely on the Government and the authorities to fix the pay scales and to decide whether the pay scale of post B should be increased or not".

23. This was reiterated in *Union of India v. Hiranmoy Sen* (2008) 1 SCC 630 where it was observed as under:

"4. This Court in *S.C. Chandra vs. State of Jharkhand* 2007 (8) SCC 279 has held that the Court cannot fix pay scales as that is purely executive function. In the aforesaid decision one of us (Markandey Katju, J.) has discussed in detail the principle of equal pay for equal work and has observed that the said principle has been considerably watered down in recent decisions of this

Court, and it is not applied unless there is a complete and wholesale identity between the two groups, and even there the matter should be sent for examination by an expert committee appointed by the Government instead of the Court itself granting the higher pay scale. The entire case law on the subject has been discussed in the said decision. Following the aforesaid decision in *S.C. Chandra case* this appeal has to be allowed. It cannot be said that there is a complete and wholesale identity between the Senior Auditors in the Office of Accountant General, Assam and Meghalaya and Assistants in the Central Secretariat.”

24. In the absence of any recommendations of an expert body like the CPC or an Anomalies Committee, it was not open to the CAT to have itself ordered the grant of parity in pay scales.

25. For the aforementioned reasons, the Court sets aside the impugned order of the CAT. The petition is accordingly allowed but in the circumstances, with no order as to costs.

S. MURALIDHAR, J

TALWANT SINGH, J.

NOVEMBER 05, 2019

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