



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

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Date of decision: July 6, 2023

+ W.P.(C) 2010/2020

M.K. KAUSHAL & ORS.

..... Petitioners

Through: Mr. A.K. Barua, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Asheesh Jain, CGSC with
Mr. Gaurav Kumar, Ms. Ankita Kedia
and Ms. Ria Khanna, Advs. for
R-1 to R-3

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this writ petition by the petitioners is to an order dated July 26, 2019, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.1897/2014 ('OA', for short) whereby the Tribunal has dismissed the OA which was filed by the petitioners herein.

2. The case of the petitioners before the Tribunal was that they are serving / retired as Foreign Trade Development Officers ('FTDO', for short) posted at various regional offices of the Directorate General of Foreign Trade ('DGFT', for short) which is an attached office under the Ministry of Commerce and Industry, Department of Commerce,



Government of India. According to them, the post of FTDO is filled up by two streams. The first feeder cadre is 100% by promotional from DGFT staff of LDC, UDC, Licensing Assistant and Sectional Head. The second stream is by officers of CSS cadre.

3. Their grievance is primarily seeking parity qua the Section Officers working in CSS as FTDO (CSS) and other similar organizations. It was their case that the scales of pay of FTDO (Non-CSS) were at par with the Section Officer of CSS and other similar organizations till 5th CPC with both being in the pay scale of ₹6500-10500 but with the implementation of the 6th CPC, a difference has been brought in the pay of FTDO (Non-CSS) / FTDO (CSS), inasmuch as the FTDO (CSS) getting higher grade pay. The prayer made by them is that they should be given the grade pay as was being given to the FTDO (CSS). The Tribunal has rejected the OA by stating in paragraphs 14 to 16 as under:

“14. In this case the channel for promotion of Non-CSS FTDO is 100% on promotional basis from LDC/UDC/Licensing Assistant/Section Head whereas in the category of CSS FTDOs, it is from Assistant to SO which also has direct recruitment component. Both the feeder category and also the promotional post of non-CSS FTDO and CSS FTDOs are also different. The Non-CSS FTDOs are from DGFT and continue to move up as Assistant Director General of Foreign Trade and Deputy Director General of Foreign Trade whereas the FTDOs of CSS have the promotional avenues as Under Secretary, Deputy Secretary and Joint Secretary. It has also been stated that the CSS FTDOs are only posted in the Headquarters and the Non-CSS FTDOs are posted across the country in the regional offices and thereby their job assignment is different from those from CSS. Pay



Commission has also considered in detail, the job description, qualification, experience, promotional avenues, channels of promotion for various services and made recommendation which can not merely be for maintaining the status quo but for deciding and revising existing pay structure as needed and, therefore, the claim of parity herein is not tenable.

15. At the same time, grievance, if any, arising out of the recommendation of the pay commission is taken up through Anomalies Committee. In this case, the applicants' representation has been processed through DGFT to the Anomalies Committee and was not agreed to by the respondents. The proposal was resubmitted for reconsideration and once again after examination, the same was not agreed to.

16. In the instant case, the applicants have already availed of remedies available like Anomalies Committee, not once but twice. 7th Central Pay Commission's recommendations have already been implemented. At this point of time, seeking any parity once again on the basis of recommendation of the 6th Central Pay Commission and the Government decision is totally misplaced."

4. The submission of Mr. A.K. Barua, learned counsel for the petitioners is primarily that the Tribunal without proper application of mind and in total disregard of factual matrix of the case that is relevant for determination of issue has dismissed the OA. According to him, the 6th CPC recommendation which did not retain the historical parity is based on wrong facts adduced by the respondents, irrelevant considerations above all it has failed to appreciate that there is arbitrariness and hostile discrimination which is writ large on the face of the impugned order. The Tribunal has overlooked the settled position of law as laid down by this Court in the case of **D.G.O.F**



Employees' Association and Anr. v. Union of India and Ors., W.P.(C) 4606/2013 decided on October 14, 2014 and *Kaushik Paik & Ors. v. Union of India & Ors., W.P.(C) 116/2013* decided on September 06, 2013.

5. According to him, the whole edifice of the respondents' case as brought out in their preliminary submissions is based on two false premises; (i) that the petitioners are working in non-secretariat organization and; (ii) that they are governed by separate recruitment rules. In this regard, he states that both the aspects are irrelevant moreso, when the FTDO (CSS) are being paid higher grade pay. Moreover, the petitioners who are posted as FTDO are entrusted with the responsibility and statutory powers to implement Foreign Trade Policy of the Government under the Customs Act, the Central Excise Act, and various other Central laws besides guidelines and circulars issued by the Reserve Bank of India from time to time.

6. For four decades and until July 01, 2006 both were enjoying the same pay parity and this historic parity has been disturbed by the wrong implementation of the 6th CPC. Despite recommendations, the respondents have not corrected the hostile discrimination by granting the petitioners higher grade pay.

7. He submits that the Section Officer / equivalent working in DGOF, Indian Coast Guard, CAT, AIIMS etc., who are also not in Secretariat, governed by recruitment rules which are different from the Section Officers of CSS, have been given parity qua the Section Officers of the CSS. In fact, the petitioners are on a much stronger footing inasmuch as they were / are employees of DGFT which is a



participating office in the Central Secretariat; they carried the same designation called FTDO discharging the same duties and responsibilities like Section Officers (CSS) posted as FTDO. He states that the order of the Tribunal need to be set aside and the petitioners be granted higher grade pay.

8. On the other hand, Mr. Asheesh Jain, learned CGSC appearing for the respondents would contest the submissions made by Mr. Barua by stating that there is a clear distinction in hierarchy, educational qualifications, duties and responsibilities, pre-revised Scales, promotional avenues of petitioners. He submits that the FTDO (CSS) and FTDO (Non-CSS) are governed by separate recruitment rules. FTDO (Non-CSS) belong exclusively to DGFT Cadre being posted at Regional Offices and FTDO(CSS) belong to CSS Cadre of the Department of Commerce posted against the sanctioned strength of Cadre posts allocated to DGFT. The difference in recruitment and appointment channels of FTDO (Non-CSS) and FTDO(CSS) is illustrated below:

<i>Assistant DGFT</i> (Grade Pay of Rs. 5400/-)	<i>Under Secretary</i> (PB-3 Grade Pay of Rs. 6600/-)
<i>FTDO (Non CSS)</i> (PB-2 Grade Pay of Rs. 4600/-)	<i>Section Officer</i> (Designated as FTDO (CSS)while being posted in DGFTHQ) (PB-2 Grade Pay of Rs. 4800/-)
<i>Section Head</i> (PB-2 Grade Pay of Rs. 4200/-)	<i>Assistant Section Officer</i> (CSS) (PB-2 Grade Pay of Rs. 4600/-) (Directly filled by Combined
<i>Upper Division Clerk(UDC)</i> (PB-2 Grade Pay of Rs. 2400/-)	
<i>Lower Division Clerk(LDC)</i> (PB-2 Grade Pay of Rs. 1900/-)	



<i>Intake is made through Staff Selection Commission at Higher Secondary Level</i>	<i>Graduate Exam conducted by Staff Selection Commission)</i>
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9. According to him, from the above table, it is evident that while there is a direct recruitment to the post of FTDO (CSS), but there is no element of direct recruitment to the post of FTDO (Non-CSS). The post of FTDO (Non-CSS) is filled 100% by promotion from Section Heads whose channel of promotion is completely different from FTDO (CSS). FTDO (CSS) are promoted from the post of Assistant Section Officer (CSS) which is a direct entry post, which forms part of the CSS Cadre of the Department of Commerce and gets promoted to the post of Section Officer (CSS). Since, the promotional avenue of FTDO (Non-CSS) and FTDO (CSS) are completely different, no pay parity can be granted to the petitioners.

10. He also submits that Secretariat of Ministries and HQs of Department together constitutes the Headquarter Organisation which is primarily tasked with formulation of policy and ensuring its execution. The Secretariat Organisation has a direct interface between the Executive and Legislature and helps the Ministers in discharging their accountability to the Parliament. On the other hand, non-Secretariat posts/offices, like FTDO (Non-CSS), are more of a field agency, which may be either attached or subordinate offices or quasi-Government / autonomous / public sector undertakings. These offices are primarily concerned with the implementation of Governmental Policies subject to the supervision of the Secretariat.

11. It is his submission that the doctrine of equal pay for equal



work is not abstract and has no mechanical application. Further, the applicability of this doctrine must be left to be evaluated and determined by an expert body; this Court cannot interfere with the same. He relies upon the judgment of the Supreme Court in the case of ***State of Bihar & Ors. v. Bihar Secondary Teachers Struggle Committee & Ors., (2019) 18 SCC 301*** to contend that granting pay scales is a purely executive function; grant of pay parity by the Court may have a cascading effect and attract adverse consequences; and Courts must consider factors like source and mode of recruitment / selection. Further, reliance is placed on the judgment in ***State of Madhya Pradesh and Ors. v. Seema Sharma, MANU/SC/082712022*** wherein it was observed that the fixation of scales of pay is a matter of policy, with which the Courts can only interfered in exceptional cases where the eligibility criteria is the same and the duties are identical in every aspect.

12. Mr. Jain states that the petitioners have themselves stated in the OA filed before the Tribunal that they perform same functions as FTDO (CSS) only when posted at DGFT Headquarters. This itself suggest that petitioners do not perform same duties in normal course but only when posted in DGFT Headquarters and as such cannot seek parity with FTDO(CSS).

13. Mr. Jain also states that variation in pay is justified on the grounds of educational qualification or experience even if the nature of work is the same, by relying upon the following judgments:

(i) ***State of Haryana and Anr. v. Tilak Raj and Ors., (2003) 6 SCC 123;***



- (ii) *Shyam Babu Verma & Ors v. Union of India & Ors. (1994) 2 SCC 521;*
- (iii) *C. Chandra and Others v. State, (2007) 8 SCC 279;*
- (iv) *State of U.P. v Ministerial Karamachari Sangh, (1998) 1 SCC 422.*

14. He also submits that the grant of pay is a decision of an Expert Body (Central Pay Commission) and should not be interfered with by this Court. In this regard, he submits that the CPCs have always treated Secretariat and Non-Secretariat offices separately. The issue of pay scale pertaining to Secretariat and Non-Secretariat has been dealt with in two different chapters by 2nd to 7th CPCs. Yet, the Commissions have issued separate recommendations for Secretariat and Non-Secretariat Organisations. In such a case, no fault can be found with the recommendations of the CPC. In this regard, reliance is placed on *Union of India & Ors. v. Manoj Kumar & Ors., MANUISC/0583/2021* and *Bihar Secondary Teachers (supra)*.

15. He relies upon the judgments in *State of Uttar Pradesh & Ors v. J.P. Chaurasia, (1989) 1 SCC 121* and *Union of India & Anr. v. P.V. Hariharan & Anr., (1997) 3 SCC 568* to contend that CPC makes recommendations on pay and allowances keeping in view all the relevant factors like hierarchy, educational qualifications, duties and responsibilities, pre-revised scales, vertical and horizontal relativities, etc. It is settled law that CPC is the best judge to evaluate the nature of duties and responsibilities of the post and its recommendations should be accepted by the Courts as they go into great depths while deciding the pay scale.



16. He also controverted the reliance placed by Mr. Barua on *D.G.O.F Employees' Association and Anr. (supra)* stating that the said judgment has no applicability. That apart, he states that a Coordinate Bench of this Court had dismissed W.P. (C) 12110/2015 filed by some Assistant Sub Inspector (Shorthand Reports) in Delhi Police seeking historical parity and equivalence with Assistant Sub Inspectors (Stenographers), by observing that educational qualifications, eligibility for appointment, requisite skills in recruitment rules need to be considered and if such a relief is granted it may lead to a cascading effect.

17. According to him, the Tribunal has rightly rejected the OA and the impugned order does not need any interference.

18. Having heard the learned counsel for the parties and perused the record, we agree with the final conclusion arrived at by the Tribunal. There is no dispute that there is a clear distinction in hierarchy, educational qualifications, duties and responsibilities, pre-revised Scales, promotional avenues of the petitioners and FTDO (CSS).

19. It is the case of the respondents that there is a component of direct recruitment to the post of FTDO (CSS) while there is no direct recruitment element to the post of FTDO (Non-CSS). The FTDO (Non-CSS) is filled up by 100% by promotion from Section Head whose channel of promotion is completely different from FTDO (CSS). It is the Assistant Section Officer in CSS cadre of the Department of Commerce, gets posted as FTDO in DGFT. It is only while posted in DGFT, a FTDO (CSS) is discharging the same duties as FTDO (Non-



CSS) and not when they are posted out, which entail different posts with different duties. The doctrine of equal pay for equal work is well settled, inasmuch as pay scale can be different, if nature of job, responsibilities, experience, method of recruitment etc. is different. The *DGOF (supra)* on which reliance has been placed by Mr. Barua, is appealing, but in view of conclusion of the Tribunal in paragraphs 15, 16 and 17 of the order that the Anomalies Committee has considered the case of the petitioners and rejected it, and also in the case of *Union of India (UOI) & Ors. v. Manoj Kumar & Ors. (supra)*, the Supreme Court upheld the difference in pay scales, we are of the view that the conclusion arrived at by the Tribunal need not be disturbed in exercise of power under Article 226 of the Constitution of India. We dismiss the present petition. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 6, 2023/aky