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Court : Central Administrative Tribunal CAT Delhi

Decided On : Jan-19-2012

Judge : The Honourable Dr. Veena Chhotray, Member (a) & the Honourable Mr. a.K. Bhardwaj, Member (J)

Appeal No. : OA No. 936 of 2011

Appellant : Ganeshi Lal and Others

Respondent : The Chairman, Delhi Development Authority, Vikas Sadan, Ina Colony, New Delhi and Another

Advocate for Pet/Ap. : For the Applicants: Gyanendra Singh, Advocate. For the Respondents: Karunesh Tandon, Advocate.

Judgement :

Dr. Veena Chhotray:

1. The applicants, five in number, are working as Assistant Security Officers under the DDA. Their existing pay scale (pre-revised) is 4500-10-7000. Through this OA, they are agitating claims for higher pay scale of Rs.5000-175-9000 (pre-revised). This is on the basis of pay parity on the principle of 'equal pay for equal work'.

2. The following are the main reliefs sought:-

“A. To Direct the respondents to keep the applicants in pay scale of Rs.5000-175-9000/-[pre-revised] at par with the Assistant Security Officers of the other departments like HUDA, AIIMS, DTC. PUDA, Transco Ltd. and Railways.

B] To direct the respondents to pay the arrears to the applicants arose out of inequality of their pay w.e.f. 1-1-996 @ 18% p.a.”

Besides, award of cost of proceedings in their favour and directions for any other relief deemed fit have been prayed. As their representation on the subject has been rejected by the respondents vide the order dated 6.1.2011 (Annex. A-1), this order is the subject of challenge in the present OA.

3. The learned counsels Shri Gyanendra Singh and Shri Karunesh Tandon would appear respectively for the applicants and the respondents.

4. The claims of the applicants have mainly two-fold strand of arguments: (i) a comparison with pay scales given to the Assistants on the administration side and Stenographers. (ii) A claimed pay parity with the Assistant Security Officers working in various other organizations under the Central Government, GNCTD and even some State Governments.

5. As regards the first aspect, it has been submitted that initially the Assistant Security Officers had been given the same pay scale as the Assistants i.e. Rs.425-700 (3rd CPC). However, in the year 1996 the pay scales of the Assistants and Stenographers were revised from Rs.1400-2300 to Rs.1640-2900. A corresponding revision in the pay scales of the Assistant Security Officers did not take place. Even in the 5th CPC, whereas the scale of the Assistants and the Stenographers was revised to Rs.5500-9000, that of the Assistant Security Officers was revised as Rs.4500-7000. Similar discrepancy is stated to have continued even in the post-6th CPC scenario.

The argument of the applicant's learned counsel would be that incumbents of Group 'C' posts have thus been placed in different pay scales. In support, the Office Order No.2241 dated 2.7.1979 (Annex. A-2) creating the Security cadre of the Delhi Development Authority would be adverted by the learned counsel. Vide

this order, while creating different posts in the Security cadre, the posts of both Assistant Security Officer as well as Assistant Stenos had been created in the same pay scale of 425-700.

6. On the second aspect, it is pleaded in the OA that the applicants are performing the same nature of duties as their counterparts in other organizations. The names mentioned in this regard are central government departments-like the Railways and Ministry of Commerce and Industry, autonomous bodies under the central government such as AIIMS, bodies under various state governments-like Haryana Development Authority, Mumbai Municipal Corporation, Punjab Urban Development Authority-and even the Delhi University. An averment of discrimination has been raised since the applicants are being given lower pay scales than their counterparts in these organizations.

7. It is also submitted in the OA that the applicants have been agitating this matter before the respondents since 1996, and have submitted various representations in this regard. The rejection of their representation vide the impugned order dated 6.1.2011, stated to be only the last in the series.

8. In support, the applicant's learned counsel would place reliance upon two judgments of the Delhi High Court. The CWP No. 48 of 1987 (Investigators Association Vs. DDA) decided on 11.11.1990; and the common order dated 17.12.2004 deciding the WP(C) 6637/2002 (D.R. Srivastav and Ors. Vs. DDA) along with the WP(C) 5728/2003 (Shri S.N. Garg and Ors. Vs. DDA).

9. The claims in the OA have been opposed by the respondents. The counter affidavit submits about the posts of Assistants or Senior Stenographers in the administration side not being comparable with the Assistant Security Officers which have separate RRs, duties and responsibilities, educational qualifications, promotional hierarchy and mode of recruitment. The impugned order mentions about the upward revision of the pay scales of the Assistants and the Stenographers having been made on the strength of the decision of the Government of India specifically applicable to these two categories. It is further stated that the same cannot be applied across the board to all the categories which were earlier having the same scales as that of Assistants.

10. It is also the stand of the respondents that the demand of the applicants for inter-departmental parity is not maintainable. Both the impugned order as well as the counter affidavit reiterate this point that the matter has been examined at length. It is further stated that the pay scales depend upon RRs i.e. the mode of recruitment, job requirement, promotion hierarchy, initial qualification and specific training. The security and safety requirements are said to differ from organization to organization depending upon the kind of job expected of them and the same cannot be compared with that of the DDA. As such, the demand of Assistant Security Officers regarding revision of pay scales at par with ASOs with other organizations are stated not to be justified.

11. The counter affidavit has also made an averment about the legitimate dues of the applicant having been given. It is stated that the benefit of the appropriate revised pay scales as per the 4th, 5th and the 6th CPC have been given to the applicants.

12. We have considered the respective submissions of both the sides and the material on record. After a careful consideration, we do not find the claims raised in the OA as tenable. This is for the following reasons:

12.1 The claims for pay parity qua the Assistants and the Stenographers simply on the premise that initially these posts had been created in the same scale as that of the Assistant Security Officers cannot provide an adequate justification for a continued pay parity. This would depend upon multiple factors, and hence pursuing this line of argument would be stretching it too far. We also note the respondent's contention about the upward revision in the pay scales of the Assistants and the Stenographers having taken place on the strength of the corresponding decisions in the Government of India specifically for these very categories, which cannot be made applicable to other categories of employees across the board.

12.2 The second leg of argument regarding pay parity qua the Assistant Security Officers of other organizations i.e. whether in the Central Government departments, or autonomous bodies under the Central or the State Governments-also cannot be taken in a simplistic way. Only by virtue of identical nomenclature,

an inference cannot be drawn about their functions and level of responsibilities also being same. Again, we find merit in the respondent's contention that such a comparison would include within its compass multifarious factors.

12.3 The claims for pay parity on the principle of 'equal pay for equal work' have formed the subject of a catena of judgments by the Hon'ble Apex Court as also the Hon'ble High Courts. The broad trends that emerge are about the principle having undergone a sea change. Whereas in the 1970's and 80's, the Apex Court had been liberally applying the principle, in its recent decisions, it has been insisting upon strict pleadings and proofs to support the claims of parity. Besides, the burden of proof is clearly held to be on the claimant.

The most important development in this field has been of the emphasis on the doctrine of 'wholesale identity'. In its judgment in State of Haryana Vs. Charanjeet Singh and Ors., 2006(9) SCC 321, the proposition of law was propounded as below:-

A modification in the principle of 'equal pay for equal work' -equal pay can only be given for equal work of equal value. Mere designation would not suffice, for evaluating the quality of work differences such as educational or technical qualifications experiences and several others may have a bearing.

Reiterating the same principle in a subsequent judgment in State of Punjab and Anr. Vs. Surjeet Singh and Anr., (2009)2 SCC (LandS) 696, the Hon'ble Apex Court further elaborated the doctrine of 'wholesale identity':-

It is no longer in doubt or dispute that grant of the benefit of the doctrine of 'equal pay for equal work' depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity.

In another judgment, UT Administration, Chandigarh and Ors. Vs. Manju Mathur and Ors., (2011) 1 SCC (LandS) 348, the Hon'ble Apex Court in no unclear terms reiterated the following proposition of law:-

The doctrine of equal pay for equal work can be invoked only when the employees are similarly situated and that similarity of the designation or nature or quantum of work is not determinative of equality in the matter of pay scales and that the court has to consider several factors and only if there was wholesale identity between the holders of the two posts, equality clause can be invoked, not otherwise.

As per the averments made before us, the present case does not fulfill the requirements of law as propounded by the Hon'ble Apex Court in the above judgments.

12.4 The reliance placed by the applicant's learned counsel on the two decisions of the Hon'ble Delhi High Court cannot be pressed in support of the applicant's claims, in view of the clear development of law by the catena of judgments of the Hon'ble Apex Court, only some of which have been illustrated above. Even otherwise, these decisions would need to be considered in the context of their factual circumstances, which on a cursory perusal are found to be distinguishable from those of the present OA.

13. For the reasons spelt out in para 12 above, the claims in the OA are not found to be sustainable and in consonance with law on the subject. Accordingly, the OA is dismissed with no orders as to costs.

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