

Jagmohan Sharma and ors. Vs. Nipccd and ors.

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Court : Delhi

Decided On : Apr-25-2013

Judge : Pradeep Nandrajog

Appellant : Jagmohan Sharma and ors.

Respondent : Nipccd and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: April 18, 2013 Judgment Pronounced on: April 25, 2013 + WP (C) 7958/2011 JAGMOHAN SHARMA & ORS.Petitioners Represented by: Mr.Yashish Chandra, Advocate versus NIPCCD & ORS. Represented by: Respondents Mr.H.D.Sharma, Advocate for R-1 Mr.Saajib Qureshi, Advocate for Mr.Jatan Singh, CGSC for UOI CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE V.KAMESWAR RAO PRADEEP NANDRAJOG, J.

1. The issue pertaining to pay-scale in which Assistants and Stenographers Grade-II working in subordinate and attached offices of the Union of India as also Autonomous Bodies established by the Government vis--vis Assistants and Stenographers working in the Central Secretariats and appointed through competitive examination and becoming members of the Central Secretariat Service (CSS) and Central Secretariat Stenographers Service (CSSS) became the bone of contention when the 3rd Central Pay Commission placed the two in different payscales, giving reason:By the very nature of work in the Secretariat, the volume of dictation and typing work was expected to be heavier than in a

subordinate office, the requirement of secrecy even in civil offices of the secretariat could be very stringent. Considering the differences in the hierarchical structures and in the type of work transacted in the Secretariat and in the subordinate offices, the Commission was not in favour of adopting a uniform pattern in respect of matters listed in the preceding paragraph.

2. Litigation ensued. Some Assistants and Stenographers working in a few subordinate offices under the Union of India as also a few Assistants and Stenographers working in some Autonomous Bodies obtained orders favourable to them. Some failed. Those who succeeded had their pay re-fixed in the higher pay-scale. When the 4th Central Pay Commission submitted its report, recommendation was to place Assistants and Stenographers working in the Central Secretariat in the pay-scale `1640-2900/- and those in the non-Secretariats in the pay-scale `1400-2600/-. These pay-scales were brought into force in the year 1998 but with retrospective effect from January 01, 1986.

3. Further litigation ensued. The first judgment on the subject after 1986 rendered by the Supreme Court is reported as AIR 198.SC 129.Federation of All India Customs and Central Excise Stenographers (Recognized) & Ors. v. UOI & Ors. Pay parity was denied noting that the process of recruitment was different and nature of duties performed by Assistants and Stenographers in the Central Secretariat was onerous. Indeed, in the decisions reported as (1997) 3 SCC 56.Union of India & Anr. v. P.V.Hariharan & Anr., (1996) 11 SCC 7.State of Haryana & Ors. v. Jasmer Singh, (1999) 4 SCC 40.Alvaro Noronha Ferriera & Anr. v. Union of India & Ors., 1993 Supp. (3) SCC 24.State of West Bengal & Ors. v. Madan Mohan Sen & Ors., it has categorically been held that apart from other factors having a bearing on parity for equating posts, the nature of work in relation to volume, evaluation of duties and responsibilities had an important role to play.

4. In spite of the decision of the Supreme Court in Fedaration of All India Customs and Central Excise Stenographers case (supra), a number of decisions came to be pronounced by the Central Administrative Tribunal, which were upheld by the Supreme Court, and one of which was the decision dated January 19, 1996 allowing OA No.1448/1993 V.R.Panchal & Ors. v. UOI & Ors. in which

Stenographers and Assistants working in subordinate offices obtained favourable verdicts requiring them to be placed in the pay-scale `1640-2900. But some failed.

5. We find that the divergence of opinion in various judicial pronouncements up to the Supreme Court is a result of the fact that some autonomous bodies or the Central Government drew attention of the Supreme Court as also the High Courts to the fact that the 3rd and the 5th Central Pay Commission had specifically addressed themselves on the subject of parity and had found fault with the decisions which had directed that all Assistants and Stenographers be placed in the same pay scale ignoring that even under the Central Government only Assistants inducted in the Central Secretariat Service and who work in the Central Ministries were placed in a higher pay-scale as against Assistants and Stenographers working in the subordinate offices under the Ministries. In other words, even under the Central Government, Assistants and Stenographers were being placed in the pay-scale `1400-2600/- as also in the pay-scale `1640-2900/-. Those under the Union and members of the Central Secretariat Stenographers Service and working in the Ministries were placed in the pay-scale `1640-2900/- and others in the pay-scale `1400-2600/-. We additionally highlight one fact : That the Government of India had permitted autonomous bodies to pay Assistants and Stenographers salary in the pay-scale `1640-2900/- but only for those who were working in the headquarters of the said organizations. The 5th Central Pay Commission once again went into the 6. issue and in its report, as per paras 46.31 to 46.34, discussed the subject as under: 46.31 The pay scale of Assistants in the Central Secretariat Service (CSS) and Stenographers in the CSSS was revised by the Government on 31.7.1990, effective from 1.1.1986. Some of the Assistants/Crime Assistants and Stenographers Grade II working in the CBI, Directorate General of Income Tax (Investigation) and Directorate of Field Publicity filed a number of petitions before the Principal Bench of the Central Administrative Tribunal seeking benefit of the orders dated 31.7.90. Rejecting the contention of the Union of India that Stenographers Grade II and Assistants in the non-Secretariat offices could not be compared with Stenographers Grade C of CSSS and Assistants of CSS because of the different classification, method of recruitment, nature of duties and responsibilities and eligibility for promotion to higher grade, the CAT directed the UOI to place the petitioners in the pay scale of

`1640-2900. The judgment of the CAT has been implemented. 46.32 The comparative position of Stenographers in the Secretariat and offices outside the Secretariat as it existed at the time of constitution of the Fifth CPC is as under:

Secretariat	a) Stenographer Grade D (`1200-2040)	Non-Secretariat	a) Stenographer Gr.III (`1200 2040)
	b) Stenographer Grade C (`1640-2900)		b) Stenographer Gr.II (`1400-2300) (`1400-2600) (`1640-2900)
	c) Stenographer Gr.I		c) Stenographers Grades A & B (Merged) (`2000-3500)
	d) Principal Private Secretary (`3000-4500) (`1640-2900)		d) Senior Assistant (`2000-3200)
	e) Private Secretary (`2000-3500)		e) Principal Secretary (`3000-4500)
	f) Private		

46.33 Associations representing stenographers have urged before us that there should be complete parity between stenographers in non-secretariat offices and in the Secretariat in matters relating to (a) pay scales, (b) designations, (c) cadre structure, (d) promotion avenues, (e) level of stenographic assistance to officers in technical, scientific and research organizations, etc. Suggestions have also been made for a higher pay scale for stenographers in the entry grade, treating advance increments granted for acquiring proficiency in stenography at higher speed as pay, allowing stenographers in nonSecretariat offices to compete in the Limited Departmental Competitive Examination (LDCE), and grant of Special Pay for operating computers, fax machines, etc. 46.34 We have given our careful consideration to the suggestions made by Associations representing stenographers in offices outside the Secretariat in the light of observations made by the Third CPC. The Commission had observed that as a general statement, it was correct to say that the basic nature of a stenographers work remained by and large the same whether he was working with an officer in Secretariat or with an officer in a subordinate office. The Commission was of the considered view that the size of the stenographers job was very much dependent upon the nature of work entrusted to that officer and that it would not be correct, therefore, to go merely by the status in disregard of the functional requirement. By the very nature of work in the Secretariat, the volume of dictation and typing work was expected to be heavier than in a subordinate office, the requirement of secrecy even in civil offices of the secretariat could be very stringent. Considering the differences in the hierarchical structures and in the type of work transacted in the Secretariat and in the subordinate offices, the Commission was not in favour of adopting a uniform

pattern in respect of matters listed in the preceding paragraph. To our mind, the observations of the Third CPC are as relevant today as they were at that point of time and we are not inclined to overlook them totally. In view of the above mentioned distinguishable features, we do not concede the demand for absolute parity in regard to pay scales between stenographers in offices outside the Secretariat and in the secretariat notwithstanding the fact that some petitioner stenographers Grade II have got the benefit of parity in pay scale through Courts. However, pursuing the policy enunciated by the Second CPC that disparity in the pay scale prescribed for stenographers in the secretariat and the non-secretariat organizations should be reduced as far as possible, we are of the view that Stenographers Grade II should be placed in the existing pay scale of `1600-2600 instead of `1400-2300/`1400-2600. The next available grade of stenographers in non-Secretariat offices is `1640-2900 (Grade I). We do not recommend any change in the existing pay scale of Stenographers Grade I. Senior Personal Assistants and Private Secretaries are at present in the pay scale of `2000-3000 and `2000-3500 respectively. Giving the Senior PAs the benefit of rationalization of pay scales, we recommend that both Sr.PAs and Private Secretaries should be placed in the pay scale of `2000-3500 and known as Private Secretaries. Stenographers in the newly recommended grade of `2500-4000 should be known as Senior Private Secretaries and those in the pay scale of `3000-4500 shall continue to be known as Principal Private Secretaries.

7. A reading of the aforesaid paragraphs and in particular paragraph 46.34 of the report would bring out that a lower and a higher pay-scale for Stenographers and Assistants, working in the Secretariat of the Union and working elsewhere, was considered by the 3rd Central Pay Commission which had brought out that as a general statement, it was correct to say that the basic nature of a Stenographers and Assistants work remained by and large the same whether he was working with an officer in Secretariat or with an officer in a subordinate office. But the Commission was of the considered view that the size of the Assistants and Stenographers job was very much dependent upon the nature of work entrusted to that officer and that it would not be correct, therefore, to go merely by the status in disregard of the functional requirement. By the very nature of work in the Secretariat, the volume of dictation and typing work for Stenographers and clerical

work for Assistants was expected to be heavier than in a subordinate office, the requirement of secrecy even in civil offices of the secretariat could be very stringent. Considering the differences in the hierarchical structures and in the type of work transacted in the Secretariat and in the subordinate offices, the Commission was not in favour of adopting a uniform pattern pertaining to the pay-scales. The 5th Central Pay Commission affirmed the view taken by the 3rd Central Pay Commission.

8. Now, where an Expert Body has considered the matter and recorded reasons which are prima-facie supported with objective facts, a Court would be no place to opine to the contrary.

9. With the aforesaid backdrop of the legal position, we proceed to note the facts relevant to adjudicate the instant writ petition.

10. Assistants and Stenographers working in National Institute of Public Cooperative and Child Development (NIPCCD) succeeded in having their pay scales increased from `1400-2600 to `1640-2900 when W.P.(C) No.787/1996 was allowed by a learned Single Judge on October 16, 1998, but only temporarily. The same was reversed on May 05, 2002 when LPA No.125/1999 was allowed. Assistants and Stenographers took the matter to the Supreme Court which upheld the view taken by the Division Bench, but left the question open for being decided with reference to the bye-laws of NIPCCD in the context of the argument advanced that the bye-laws require employees of NIPCCD to be paid pay in the same scale as was paid by the Central Government to its employees; and for which the Assistants and Stenographers of NIPCCD were permitted to urge pleas that Central Government had accorded approval for paying salary in the higher pay scale in some Autonomous Bodies, thereby discriminating against employees at NIPCCD.

11. A second round of litigation ensued resulting in the impugned order dated September 29, 2011 being passed, against the petitioners, by the Central Administrative Tribunal.

12. The grievance of the petitioners is that the management of NIPCCD as also the Government of India cannot adopt discriminatory practices, from which grievance we understand that according to the petitioners the Government of India cannot sanction higher pay scales for Assistants and Stenographers in some Autonomous Bodies and deny the same in others.

13. Now, the decision of the Government is based upon the reports of the 3rd and the 5th Central Pay Commission, whose opinions have been noted by us briefly in the preceding paragraphs. Consistent with the recommendations of the Pay Commission the Central Government started paying salary in the higher pay scales to Assistants and Stenographers in the Central Secretariat who were appointed through competitive examination and became members of the Central Secretariat Service and Central Secretariat Stenographer Service. In the attached and subordinate offices the Government did not take any decision to pay salary in the higher pay scale. Similarly, with respect to Autonomous Bodies, on case to case basis, if parity, both qualitative and quantitative, was found in the work performed by Assistants and Stenographers in the Headquarters of Autonomous Bodies, the Central Government accepted paying salary in the higher pay scale to Assistants and Stenographers in the Headquarters of said Autonomous Bodies but not in the subordinate/regional offices of these bodies. Where it was found that even in the Headquarters the qualitative and quantitative assessment of work revealed no parity, said benefit was denied.

14. Thus, the argument that in some Autonomous Bodies the Government has agreed to pay salary in the higher pay scale is wrong. It has no basis. Of course, where, as a consequence of the matters not being defended properly and recommendations of the 3rd and the 5th Central Pay Commission being not brought to the notice of the Courts and as a result adverse verdicts were pronounced which had to be implemented, in some Autonomous Bodies Assistants and Stenographers are receiving salary in the higher pay scale.

15. The position therefore is that on the same subject we have diametrically opposite conclusions reached in various judgments of the Supreme Court, and the cause thereof has already been highlighted by us. Wherever recommendations of

the 3rd and the 5th Central Pay Commission were brought to the notice of the Supreme Court, relevant material being shown, the view correctly reached was that an expert body having given good reasons to pay salary to Assistants and Stenographers in two different scales with the criteria for differentiation being the qualitative and quantitative nature of duties performed; and the same not being brought to the notice of the Supreme Court resulting in the contra opinion being pronounced.

16. The earlier round of litigation was lost by the petitioners when the Division Bench of this Court, with reference to the qualitative and quantitative analysis denied relief and thus said issue stands closed against the petitioners. The Supreme Court gave a limited window i.e. whether the Central Government was acting arbitrary or discriminatory.

17. We find none. The reason for some Autonomous Bodies paying salary in the higher pay scale is judicial verdicts requiring to be implemented. It is trite that a decision in favour of A which is the result of a correct defence not being projected would not mean that when B litigates, upon a correct position being shown, the Court would act mechanical.

18. The contention urged that bye-law 17(a) of NIPCCD provides that the management of NIPCCD shall pay salary to its employees at par with Government employees, ignores that the bye-law requires prior approval of the Government. Further, as noted above, even the Government had decided to pay salary in the higher scale only to Assistants and Stenographers working in the Central Secretariat and not in the subordinate offices. It is thus not a case where NIPCCD is acting contrary to the manner in which the Central Government is acting. As regards the contention that the Government has agreed to pay higher salary to employees of National Informatics Centre, Central Social Welfare Board and ICMR etc., it is not known whether the same is pursuant to court judgments or keeping in view the nature and duties performed by the employees in said organizations.

19. The writ petition is dismissed but without any orders as to costs. (PRADEEP NANDRAJOG) JUDGE (V.KAMESWAR RAO) JUDGE APRIL 25 2013 mamta