
(2019) 02 CAT CK 0182

In the Central Administrative Tribunal

Case No : Original Application No. 1628 Of 2013

Central Secretariat Stenographers' Service Association

APPELLANT

Vs

Union Of India Through Secretary

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Central Civil Services Rules (Revised Pay) 2008 — Rule 9

Citation : (2019) 02 CAT CK 0182

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : L.R. Khatana, Piyush Gaur

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The first applicant is the Central Secretariat Stenographers' Service (for short, CSSS) Association, and the second applicant is its Member.

2. This OA is filed with a prayer to "declare the impugned order/decision and Rule 9 of CCS (Revised Pay) Rules, 2008 to the extent it discriminates against the promotees and provides/prescribes the benefit of higher/discriminatory fixation of entry pay to the direct recruits alone as arbitrary, unreasonable, iniquitous, discriminatory and unconstitutional being violative of Articles 14 and 16 of the Constitution of India". The applicants further seek a direction to the respondents to make initial fixation of pay to the promotee Personal Assistants at Rs.17,140/-, prescribed for the direct recruits with effect from the date of promotion to the said posts.

3. It is pleaded that for the post of Personal Assistant (for short, PA) in CSSS, there is a method of direct recruitment as well as promotion, and in the recent past, the pay structure for the said post has been fixed in such a way that a direct recruit gets higher salary compared to a promotee to that very post.

Reference is made to various tables appended to the Central Civil Service (Revised) Pay Rules, 2008. It is stated that under the pay structure a direct recruit gets substantially higher amount of salary compared to a promotee. Hence, the applicants pray for quashing of Rules, insofar as they enable such discrimination.

4. The respondents filed counter affidavit opposing the OA. It is stated that consequent upon the acceptance of recommendations of 6th Central Pay Commission, Service Rules were framed and except taking a general plea, the applicants are not able to demonstrate as to how any discrimination has taken place. It is also stated that Service Rules of CSSS have been amended long back, dispensing with the provision for direct recruitment to the post of PA, and there is absolutely no basis for the plea raised by the applicants. It is further stated that much before the Rules were amended dispensing with the direct recruits, the appointment of candidates through that procedure was stopped.

5. We heard Shri L. R. Khatana, learned counsel for the applicant and Shri Piyush Gaur, learned counsel for the respondents.

6. An employee holding a particular post expect, and, in fact, is justified in demanding that same salary be drawn by others, holding the same post. Though the Service Rules may provide for different methods of appointment to a post, such as, direct recruitment, promotion, or deputation, the pay attached to the post is required to be the same. The discrepancy if at all, can be on account of the increments that are sanctioned to the employees on account of their personal accomplishments, such as, acquiring higher qualifications or undergoing family planning operations. It has also been decided by this Tribunal in OA No.1456/2015 through order dated 06.03.2017 that if the Service Rules or other proceedings stipulate different pay scales for the persons appointed through direct recruitment on the one hand and promotion on the other hand, the mere fact that the direct recruitment did not take place at a particular time does not make much of difference and the Government is under obligation to bring out the parity of pay scales between them.

7. In this case, we repeatedly requested learned counsel for the applicants to place before us, any order proceedings or Recruitment Rules that provide for different pay scales for direct recruits on the one hand and promotees on the other, appointed to the post of PA. However, he is not able to demonstrate any such discrepancy. His endeavor is to interpret some proceedings issued in the light of the implementation of 6th CPC, and to attribute them to the direct recruit PAs. There again, we do not find any direct mention of the post and it is mostly by inference. Under these circumstances, we do not find any reliable factual material to undertake the verification as to the existence of different pay scales for promotees and direct recruits.

8. One important factor that militates against the applicants is that the respondents have amended the Recruitment Rules completely dispensing with

the method of direct recruitment. Added to that, for many years before amendment of rules, they stopped direct recruitment, and the result is that the appointment is exclusively through promotion. Therefore, the occasion to make any comparison between direct recruitment and promotee does not arise.

9. Reliance is placed upon the judgment of Hon'ble Supreme Court in *Kamlakar and Others vs. Union of India & Ors.* (1999) 4 SCC 756, wherein it was held that any distinction between direct recruits and promotees in the same cadre is impermissible in law. The relevant portion reads as under:-

"...Once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given is concerned. The birthmarks have no relevance in this connection. If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale- which were matters common to all of them before the impugned order of the Government of India was passed on 2-7-1990,- then any distinction between Data Processing Assistants who were direct recruits and those who were promotees, is not permissible."

Similar observations were made in *Union of India and Others vs. Atul Shukla and Others* (2014) 10 SCC 432.

10. There cannot be any second opinion about the law laid down by the Hon'ble Supreme Court. In the instant case, however, firstly the channel of direct recruitment is completely closed and secondly the applicants are not able to demonstrate that the respondents have stipulated different pay scales for direct recruits on the one hand and promotees on the other hand.

11. Learned counsel for the applicants has submitted written arguments also which, by and large, are the same as argued in the Court.

12. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.