
(2019) 11 CAT CK 0031

In the Central Administrative Tribunal

Case No : Original Application No. 2482 Of 2014

Rakesh Kumar And Ors

APPELLANT

Vs

Ministry Of Agriculture And Ors

RESPONDENT

Date of Decision : 20-11-2019

Acts Referred:

Citation : (2019) 11 CAT CK 0031

Hon'ble Judges : Vijay Lakshmi, J;Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Satya Mitra Garg, Anuj Jain, Rajeev Kumar, Anup Singh

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. Applicants are working as Milk Distribution Officer (MDO) in Delhi Milk Scheme (DMS), which is a subordinate office of Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture, Union of India.

2. Pursuant to 2nd CPC to 5th CPC, the Section Officers (SOs) of Central Secretariat Service (CSS) and MDOs were granted the same pay scale. As per 5th CPC this scale was Rs.6500-10500. Applicants plead that 6th CPC recommendations were accepted and notified by Government on 29.08.2008 and these were made applicable w.e.f. 01.01.2006. Following recommendation was contained in Part-B, Section-II:

"Section II

Sl. No.

Post

Present Scale

Revised Pay Scale

Corresponding Pay Band & Grade Pay

Para No. of the Pay Report

Pay Band

Grade Pay

(1)

(2)

(3)

(4)

(5)

(6)

(7)

I

OFFICE STAFF IN THE SECRETARIAT*

1

Section Officer/PS/ equivalent

6500-10500

7500-12000

8000-13500 (on completion of four years)

PB-2

PB-3

4800

5400 (on completion of 4 years)

3.1.9 (Modified by Govt.)

*This scale shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS Services like AFHQSS/AFHQSSS/RBSS and Ministerial/Secretarial) posts in Ministries/Departments organizations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc. would therefore be covered.

3. As per these recommendations Rs.7500-12000 corresponded to Rs.9300-34800 plus GP Rs.4800 and Rs.8000-13500 corresponded to Rs.15600-39100 plus GP Rs.5400. It is pleaded that since there was historical parity between SOs of CSS and MDOs, right since 2nd CPC to 5th CPC and 6th

CPC also made recommendations as above, which were approved by Government, MDO, who were having historical parity with SO, also ought to have been given these scales.

As against this, they were given the scale of Rs.9300-34800 plus GP Rs.4600 only. Their representation for parity with SO of CSS, was recommended by DMS and was forwarded to Ministry of Agriculture in August 2012. This was examined by Ministry of Law also and was recommended vide their note dated 22.05.2013. Following was recommended:

"6. The thrust of the aforesaid provision is that the scales mentioned therein shall become available only when the organizations/services have had a historical parity with CSS/CSSS. It is an admitted fact that the MDOs have had a historical parity with the SOs of CSS. Therefore, denial of the benefit to the MDOs on the ground that DMS is a non-Secretariat organization would be discriminatory and not constitutionally/legally sustainable.

In view of the above discussion, in our considered view, the provisions of the aforesaid section would apply in the case of MDOs."

Thereafter, it was examined by Department of Expenditure, Ministry of Finance but it was rejected vide Ministry of Finance, Department of Expenditure letter dated 24.06.2013.

5. Applicants are aggrieved with this rejection and preferred this OA. They seek following relief:

"(i) Quash and set aside order dated 24.06.2013 passed by Sh. Vijay Kumar Singh, Director, Ministry of Finance, Department of Expenditure, E-III(B) Branch.

(ii) Direct the respondents to grant of grade pay of Rs.4800/- in PB-2 at the entry level and grade pay of Rs.5400/- in PB-3 on completion of four years of service to the applicants who are working in the post of Milk Distribution Officer in DMS with effect from 01.01.2006.

(iii) Pay arrears of salary and other benefits to the applicants as would be calculated when applicants are granted grade pay of Rs.4800/- at entry level and grade pay of Rs.5400/- in PB-3 on completion of four years of service with effect from 01.01.2006."

6. The applicants rely upon the fact that the pay scales of SOs in CSS and MDOs were exactly same right since 2nd CPC to 5 th CPC and thus they had historical parity. They also rely upon following judgments:

(i) WP (C) No.116/2013 - Hon"ble High Court of Delhi vide order dated 06.09.2013 granted pay scale of PB-2 + GP Rs.4800 and non-functional scale of PB-3 + GP Rs.5400 after four years of service to the SOs of Indian Coast Guard Organisation, at par with SO of CSS/CSSS, on the ground of historical parity.

(ii) WP (C) No.3349/2010 - Hon"ble High Court of Delhi vide dated 17.05.2010

granted the pay scale of PB-2 Grade Pay Rs.4800 and non-functional scale of PB-3 with Rs.5400 (GP) after completion of 4 years of regular service, as was granted to the SOs of CSS/CSSS, to the SOs/PSs of Indian Council of Agricultural Research, Headquarters on the ground that the SOs of Indian Council of Agricultural Research had a historical parity of pay scales with the SOs of CSS/CSSS.

(iii) In judgment dated 19.02.2009 passed in OA No.164/2009 this Tribunal granted the pay scale of PB-2 GP Rs.4800 and non-functional scale of PB-3 with Rs.5400 (GP) after completion of 4 years of regular services, as was granted to the SOs of CSS/CSSS, to the Private Secretaries of this Tribunal on the ground that the Private Secretaries of this Tribunal had a historical parity of pay scale with their counterparts in CSS/CSSS.

7. It is also pleaded that several other non-secretariat services such as IB, RAW, ECI, UIDAI, CRPF have also been extended the same scales as are given to SOs of CSS/CSSS.

8. It is also pleaded that one of the reason recorded by Ministry of Finance in their note dated 24.06.2013 brings out that if MDO are given GP Rs.4800, the feeder category of AMDO who are in GP Rs.4200, will also demand GP Rs.4600. And this will have cascading effect and serious financial implication across the Government.

In this context, it is pleaded that feeder category to SOs of CSSS is Assistant and their pay was in GP Rs.4200. However, once SOs of CSSS were given GP Rs.4800 and GP Rs.5400, the Assistants filed OA in Tribunal and vide order dated 16.11.2009, Assistants were put in GP Rs.4600. Therefore, the plea taken by Ministry of Finance that AMDO are in GP Rs.4200, cannot be a reason to deny GP of Rs.4800 and GP of Rs.5400 to MDO.

9. Per contra, respondents opposed the OA. Following is pleaded:

"a) merely having the identical scale of pay does not establish parity of posts. Section Officers/equivalent of CSS and MDOs of DMS are entirely different posts in terms of educational qualifications, method of recruitment, feeder and promotional posts, cadre, area of deployment and functional responsibilities etc. Hence parity cannot be established between the posts of Section Officers of CSS cadre and MDOs in DMS.

xxx xxx xxx

c) Post of Section Officer in CSS is Ministerial post while MDOs in DMS are non-ministerial posts."

10. Matter has been heard at length. Sh. Satya Mitra Garg for Sh. Anuj Jain, learned counsel represented the applicants and Sh. Rajeev Kumar, learned counsel represented the respondents.

11. The MDOs were in receipt of the same pay scale as that of SOs in CSS right

since 2nd CPC to 5th CPC. The 6th CPC recommendations were considered by the Government and orders were issued on 29.08.2008. The pay scales recommended for various categories of staff were contained in the Schedule thereof. This was in two parts - Part-A and Part-B. Part-A Section-1 contained the replacement pay scales for various categories as were approved by the Government. Part-B contained certain specific recommendations about some categories of the posts for which normal replacement scales as per Part-A were not applicable and instead specific scales were applicable.

12. The Pay Commission is an expert body who take into account the various representations made by different categories of staff of the Ministries and field offices and they evaluate the same and thereafter arrive at certain conclusion. It cannot be a case that the earlier relativities, will be rigidly maintained forever. The changing situation needs to be taken into account. It is, in this context, that certain specific posts in various Ministries were granted scales different than the normal replacement scales as per Part-B.

The DMS is not included in Part-B. Accordingly, it is the normal replacement scales as per Part-A that are to be applicable to the applicants who were working in DMS.

13. Moreover, in regard to the present matter, it would be relevant to mention here that in the case of P.U. Joshi & Ors. Vs. Accountant General, Ahmedabad and Others, [2003 (2) SCC 632]. Hon"ble Supreme Court has taken a view as under:-

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one

when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

(Emphasis supplied)

14. The DMS is not a secretariat but it is a field organisation. Accordingly, the recommendations contained in Part-B Section-2, which are for all office staff in the secretariat, cannot be made applicable to the applicants. This is very clear from the heading thereof. The note quoted by the applicants (para 3 supra) is, therefore, for those in the secretariat only and not for others.

15. The relied upon judgments by the applicants are in a different context as brought out below:

15.1 In the judgment by Hon"ble High Court in respect of Coast Guard Organisation, the observations made are reproduced below:

"It is evident from the relevant extracts of the Pay Commission's recommendations that even though the subsequent portion of its report (paragraphs 3.1.14 onwards) do mention that historical parity need not necessarily be protected yet the fact remains that the earlier portions i.e. para 3.1.9, which has been extracted previously in this judgment, - had specifically carved out the services such as the Coast Guard as exceptions and maintained the pre existing parity with members of the Central Secretariat services and those in the armed forces headquarters. That this recommendation was indeed acted upon and Rules were appropriately amended to preserve the parity recommended by the Pay Commission, is evident from the Recruitment WP(C) No.116 /2013 Page 11 Rules 2008, Extracts of the CSS (Revised Pay) Rules, 2008 - made effective from 1st January, 2006 - clause (v) along with table extracted earlier, lend force to the petitioner's submission that in fact parity which existed has been preserved under the Rules. Such being the case, the respondent's contention, which found favour in the impugned order, is unsupportable in law."

15.2 In the case of Indian Council of Agricultural Research (supra) the Hon"ble High Court had recorded as under:

"10. Thus the argument of the petitioners made before us that there is no parity between the employees of ICAR with the officers of CSS as there are differences in the mode of recruitment, nature of duties and responsibilities, organizational hierarchy etc. is misconceived in the light of Government order dated 30.10.2008 where it has been approved that the pay structure for Assistants and Section Officers in the CSS may be extended to the Assistants/Personal Assistants and Section Officers/Private Secretaries in ICAR HQ."

15.3 The judgment in respect of Private Secretaries of this Tribunal is in the

context that vide Gazette Notification dated 25.10.1994, the recruitment rules had undergone amendment, bringing the Assistants/Stenographers Grade C of the CAT at par with their counterparts in the CSS/CSSS.

16. After examining various issues and recruitment rules, the Tribunal had come to the conclusion that there had been historical parity between PS of CSSS and PS of CAT. In this context, it is also required to be mentioned that till 5th CPC there was deputation from CSSS to CAT for manning of the post of PS at that time.

17. The above cases are, therefore, in the context that applicants therein had parity with CSS/CSSS or were coming on deputation/transfer from CSS/CSSS. This is not the case in instant OA.

18. In view of the foregoing, the basic conditions, for the three relied upon judgments, are very different than that of the applicants. Accordingly, these judgments are of no help to the applicants.

19. In keeping with above, the pleas of the applicant are not finding acceptability. The OA is dismissed being devoid of merit. No costs.