

(2011) 11 DEL CK 0303
In the Delhi High Court
Case No : Writ Petition (C) No. 5297 of 2000

Y.D. Sharma and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 2 AD 32

Hon'ble Judges : A.K. Sikri, Acting C.J.; Siddharth Mridul, J

Bench : Division Bench

Advocate : Pramod Kumar Sharma, for the Appellant; Anurag Kasana, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, Acting Chief Justice

1. The petitioners herein who are 34 in numbers have impugned the decision dated 18.11.1999 rendered by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") in OA No.2346A/95 thereby dismissing the claims of the petitioners for grant of revision of pay scales with effect from 01.1.1986. In a nutshell, the Tribunal has held that the orders of the respondents dated 29.11.1991 revising the pay scales with effect from 11.9.1989 was justified.

2. The petitioners joined the Department of Agriculture & Corporation and Directorate of Economics and Statistics, Ministry of Agriculture, Government of India. On the basis of the implementation of the recommendation of IVth Central Pay Commission, the pay scales were revised with effect from 01.1.1986 giving them the pay scale of " 1350-2200/-". In respect of Data Entry Operators, it was found that they were 14 scales at different levels. The IVth CPC which was set up to make recommendation with regard to pay scale and other service matters of Central Government Employees made several recommendations. In Para 11.45 of their report, the Commission recommended that:

It has been suggested that there should be regularly constituted service for staff engaged on Electronic Data Processing work. While we agree with the suggestion, we think that at this stage of development a separate cadre of Electronic Data Processing officers may not be feasible. In fact due to rapid development of computerization in administration existing employees should be exposed to this discipline so that their skills get upgraded for switch over to the new technology of work. However, as a long term policy it will be desirable to develop a cadre of experienced employees trained in Electronic Data Processing and other related areas of work. We are of the view that Department of Electronics should examine the matter and suggest re-organisation of existing electronic data processing posts and prescribed uniform pay scales and designations in consultation with DOPT. Until then the pay scales and special pay recommended by us in Chapter 8 and 24 will apply to these posts.

3. In Para 31.2, the Commission further stated that:

The pay structure recommended by us is based on the index average 608 (1960-1000) which was reached with the 12 monthly average of the index for the period ending December 31, 1985. Our terms of reference do not require us to indicate the date from which our recommendations should take effect. We, however, think that it would be administratively convenient to give the benefit of the scales of pay recommended by us from the beginning of the current financial year. In regard to our recommendations on other matters, Government will have to take specific decision to give effect to them from a suitable date keeping in view all relevant aspects including the administration and accounting work.

4. Prior to IVth Pay Commission EDP posts in various Departments carried different designations, pay scales, method of recruitment, educational qualifications/ experience and recruitment rules on the basis of job requirements of each Department. The Pay Commission recommended general revision of pay scales. For Electronic Data Processing Staff in Railways - Special recommendations were made in Chapter 10 and accordingly replacement scales were given to them because EDP staff in Railways was in receipt of special pay prior to 01.1.1986.

5. The Sheshagiri Committee was set up as a follow up the recommendations made by the IVth Pay Commission in para 11.45 which formed part of "Other Recommendations". The Committee was set up by the Department of Electronics in November, 1986. The Committee gave report on 05.6.1987. The Government examined the recommendations of the Committee and final orders were issued on 11.9.1989 to restructure and re-organise Electronic Data processing posts in different Departments of the Government of India. These orders were made effective from 11.9.1989. By order dated 11.9.1989, recommendations of IVth Pay Commission with regard to restructuring and re-organisation of EDP posts with an objective to bring uniformity in pay scales and designations, educational qualifications/ experience and method of recruitment are intended to be implemented. With the reorganization and restructuring of

EDP Cadre, the need for revised recruitment rules was felt and accordingly it was provided for in Para 5 of the O.M. dated 11.9.1989 that Department of Personnel & Training will attempt Model Recruitment Rules for EDP posts. On the basis of the Model Recruitment Rules so framed by the Department of Personnel & Training revised recruitment rules for EDO "A" to "D" were framed and notified vide Notification. Therefore, this is not simply the case of re-designation of the posts of Computer (MT). The existing incumbents working against these posts were adjusted against the restructured EDP Cadre taking into account their experience and qualification.

6. IVth Central Pay Commission had made certain recommendations for streamlining the pay structure and for constituting regular service for staff engaged in EDP work. The Government had appointed Seshagiri Committee to go into those questions and give its recommendations and also remove the anomaly, which has resulted in implementation of the IVth Central Pay Commission. After Seshagiri Committee gave its recommendation/suggestion rationalizing of pay scale, Office Order dated 11.9.1989 was issued by the Ministry of Finance giving benefit of those pay scales with effect from 11.9.1989. It is under these circumstances, when the orders were issued on 29.11.1991, the benefit was given with effect from 11.9.1989.

7. The case of the petitioners before the Tribunal as well as before us was that once the anomaly was accepted and remedial steps were taken thereupon, there was no question of making the same applicable from 11.9.1989 and it should have been with effect from 01.1.1986. The Tribunal has not accepted this plea relying upon the judgment of the Supreme Court in the case of Union of India & Ors. Vs. Secretary, Madras Civil Audit and Accounts Association and Anr., 1992 (20) ATC 176, wherein the Court has held as under:

A combined reading of the Pay Commission report and the Office Memo makes it abundantly clear that the second set of the recommendations could only be given effect to after identifying these posts. For that purpose, the whole matter is required to be examined and the necessary decision has to be taken. In this context, it is also necessary to note that the post of Assistant Accounts Officer was not in existence earlier which is now brought under a functional grade. For that purpose necessary rules have to be framed prescribing the eligibility etc. and the senior Accounts who have completed three years regular service in the grade are upgraded to this post. It is evident that all this could have been done only in the year 1987 and in the said organized Accounts office higher scales of pay were given with effect from April 1, 1987 i.e. from the beginning of the financial year. We are unable to see as to how the respondents can insist that they must be given higher scales with effect from January 1, 1986. This claim is obviously based on the ground that some of the officers belonging to the Audit wing were given scales with effect from January 1, 1986. But it must be borne in mind that they were eligible on that date for the higher scales. Likewise, some of the officers of the Accounts Wing who were eligible for higher scales were also

given. But with reference to the second part of functional grades in the Accounts Wing have to be identified and created. The respondents who got that benefit of being upgraded now cannot claim that they must also be given same scales like others in respect of whom the recommendations of the Pay Commission were given effect to with effect from January 1, 1986. There is a clear distinction between the two categories. Therefore, the submission that giving two different dates of implementation of the recommendations in respect of these two categories of personnel of the Accounts Wing and the Audit Wing offends Articles 14 and 16, is liable to be rejected.

8. The Tribunal was of the view that the aforesaid observation was fully applicable to the facts and circumstances of the case. As per the Tribunal, the IVth Central Pay Commission had suggested, inter alia, that in respect of large number of EDP posts which are existing in various Ministries/Departments, other than the Department of Railways, which have been dealt with separately in Chapter 10, there should be a regularly constituted service for staff engaged on EDP work. In this connection, they had recommended that the Department of Electronics should examine the matter and suggest reorganization of the existing posts and prescribe uniform pay scales and designations in consultation with the Department of Personnel, which exercise will naturally take some time. The petitioners cannot, therefore, claim that their case is similar to the EDP staff in the Railway Administration because the Pay Commission itself had dealt with them separately. They had also recommended that the Government will have to take specific decisions to give effect to the revised pay scales from a suitable date keeping in view all relevant aspects, including the administrative exigencies. Admittedly, in pursuance of the IVth Central Pay Commission's recommendations, the Government had carried out the exercise to consider the replacement pay scales to the incumbents of the various EDP posts and issued the impugned O.M. dated 11.10.1989, which gave effect to the revised pay scales from 11.9.1989.

9. The aforesaid analysis done by the Tribunal is not factually correct. It is very dear that the IVth Central Pay Commission itself had made certain recommendations for streamlining the pay structure and for constituting regular service for staff engaged in EDP work. The Sheshagiri Committee was appointed to go into those questions and give its recommendations and also remove the anomaly which had resulted in implementation of IVth Central Pay Commission. The Sheshagiri Committee thus gave its recommendations vide which anomaly was removed. Once that was the scope of exercise done by the Sheshagiri Committee and the recommendations/ suggestions for rationalizing the pay scale were given, it was to be given effect to from the date when IVth Central Pay Commission was enforced, i.e. 01.01.1986 and not from the date of office order, i.e. 11.09.1989. The Tribunal wrongly relied upon the judgment of the Supreme Court in Secretary, Madras Civil Audit and Accounts Association (supra). That was a case where even the posts had not been identified which were to be given the benefit. Whole matter required to be examined whereupon decision was to be

taken. So much so, post of Assistant Accounts Officer was not even in existence earlier. Necessarily, therefore, rules for the said post had to be framed prescribing the eligibility etc. It was on these facts that the Supreme Court upheld the cut-off date fixed by the Government, i.e. 1.4.1987.

10. In so far as EDP posts are concerned, they were already in existence. It is stated at the cost of repetition that IVth Pay Commission had also recommended streamlining the pay structure of the staff engaged in EDP work in different departments. Sheshagiri Committee was set up only for the purpose of removing anomalies. It is a matter of record that in various other departments/Ministries, the benefit of pay scale to such EDPs is directed to be given from 01.01.1986. In fact, there was conflict of opinion between various benches of the Tribunal itself. In some of the judgments referred by some benches, the cut-off date of 11.09.1989 had been set aside and benefit given from 01.01.1986 while some other benches maintained the date of 11.09.1989. Matter was referred to the Full Bench in OA No.2639/1989 entitled Babu Lal & Ors. v. Union of India & Ors. The Full Bench rendered its decision on 31.07.2000 holding that benefit was admissible from 01.01.1986. Distinguishing the judgment in case of Secretary, Madras Civil Audit and Accounts Association (supra), the Full Bench relied upon later decision of the Apex Court in Chandraprakash Madhavrao Dawda & Ors. Vs. Union of India & Ors., 1998 (2) SCSLJ 390 construing the very same OM dated 11.9.1989 and giving benefit from 1.1.1986. The conclusion of the Supreme Court in the said judgment is as under:

61. For all the above reasons, the impugned orders dated 2.7.90, 16.3.98 and all other orders which have the effect of redesignating the applicants -who were recruited as Data Processing Assistants - as Data Entry Operators in the scale of 1350-2200 (or 1400-2300 by concession of counsel) are arbitrary and illegal, ultra-vires and are declared violative of Articles 14 and 16 of the Constitution of India. The appellants are declared entitled to the designation of Data Processing Assistants grade II (also called earlier sager B) in the scale of Rs. 1600-2660 with effect from 1.1.1986, the date when the IV Pay Commission scales came into force. The appellants are also entitled to the scale of Rs.5000-8000 with effect from 1.1.96 in view of the government orders passed in connection with the Vth Pay Commission recommendations.

Aforesaid decision has been followed by a later judgment of the Supreme Court in the case of Kamalkar & Ors. Vs. Union of India & Ors., 1999 (3) SLJ 307 whereby the benefit which had been granted to the appellants in the earlier decision was extended also to others who had approached the Supreme Court in the aforesaid case.

11. Thus, the matter has been authoritatively determined by the Supreme Court itself qua the same Office Memorandum giving benefit from 01.01.1986 and there is no reason to deprive the petitioners of the said benefit. We thus, make the rule absolute; allow this writ petition; set aside the order of the Tribunal; and hold that the petitioners shall be entitled to the pay scale with effect from

01.01.1986.