

Supreme Court of India

Union Of India & Anr vs S.K. Sareen on 15 October, 1997

Author: K Venkataswami

Bench: K. Venkataswami, V.N. Khare

PETITIONER:

UNION OF INDIA & ANR.

Vs.

RESPONDENT:

S.K. SAREEN

DATE OF JUDGMENT: 15/10/1997

BENCH:

K. VENKATASWAMI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. Venkataswami J.

This appeal is preferred against the order of the Principal Bench of Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), New Delhi in O.A. No. 777/92 dated 7.8.1992.

The respondent preferred the said O.A. praying for a direction to the appellants to grant him (applicant before the Tribunal) the pay scale of Rs. 3000-4500/- from 1.1.1986 to which he is entitled to in terms of the rules as well as on the principles of "equal pay for equal work". The claim of the respondent was that he being attached to the Vice Chairman of the Tribunal as Private Secretary is entitled to the same scale of pay as drawn by the Private Secretaries to Ministers and Judges of the High Court. This claim of the respondent was resisted by the appellants by filing reply to the affidavit filed by the respondent before the Tribunal.

The Tribunal on the basis of the pleadings and arguments advanced by counsel on both sides granted the relief in the following terms:-

"Pending the making of appropriate provisions in this regard in the rules, particularly those relating to the selection of Private Secretaries in the higher scale of pay of Rs.

3000-4500, it would be reasonable to grant to such of those Private Secretaries to the Chairman/Vice Chairmen of the C.A.T. who have rendered eight years of service in the feeder grade of Rs. 2000-3500, including the service rendered by them in the C.S.S.S. or their parent departments in a similar grade, the scale of pay of Rs. 3000-4500 on adhoc basis. Accordingly, we direct that the respondents shall give the benefit of upgradation on an ad hoc basis to the applicant from the date he completes the period of eight years' service in the feeder grade of Rs. 2000-3500, including the service rendered by him in the C.S.S. Grade 'A' & 'B'. The pay of the applicant shall be refixed accordingly and the arrears paid to him."

It will be seen from the above, the respondent in his individual capacity prayed for the issue of writ of mandamus, the Tribunal granted the relief which would amount to re-writing the rules governing the service of the personnel in the Tribunal. In the view, we propose to take it is unnecessary to deal with the matter elaborately.

The crucial factor in matters of this nature revolves around mainly to mode of recruitment, qualification, responsibilities attached to the office, promotional opportunities and like of that. On this aspect, the respondent (applicant before Tribunal) has not brought forth materials in his affidavit before the Tribunal. On the other hand, the appellants in their reply have elaborately stated as follows:-

"4. It is submitted that there is no functional parity between the Private Secretaries in the Central Administrative Tribunal and those attached to the Secretaries in the Ministries/departments of the Govt. of India and judges of High Courts as briefly explained below:-

i) The conditions of service of the employees of Central Administrative Tribunal are entirely different from those of the Secretariat employees are formed of organized cadres and the Private Secretaries come within the Central Secretariat Stenographers Service (CSSS) cadre. Similarly, the employee of High Courts are governed by different set of rules separate for each High Court. For instance, the Delhi High Court employees are governed by the Delhi High Court Establishment Rules, 1972. On the other hand, the employees of Central Administrative Tribunal are governed by the Central Administrative Tribunal (Staff Conditions of service) Rules, 1985 notified by the Central Govt. in exercise of the powers conferred by clause (b) of Section 36 of the Administrative Tribunals Act, 1985. Under Rule 3 thereof, the nature and categories of the officers and other employees of the Tribunal and the scale of pay attached thereto have to be as specified in the Schedule thereto. In the Schedule referred to, the post of Private Secretary has been shown as Rs. 200-3500. Rule 4 of these Rules lays down that the conditions of service of the officers and other employees of the Tribunal, in matters of pay, allowances, pension and retirement benefits, medical benefits and other conditions of service, shall be regulated in accordance with such rules and regulations as are for the time being applicable to officers and employee belonging to Group A, Group B, Group C and Group D of the Central Government as

the case may be, of the corresponding scales of the Pay stationed at those places. The applicants have not challenged the validity of these rules. Therefore, there is no question of parity between Central Administrative Tribunal and the Central Secretariat Service and High Courts.

(ii) The employees of Central Administrative Tribunal are within the purview of the Administrative Tribunals Act, 1985, whereas the employees of High Court are excluded from the purview of Central Administrative Tribunal under Section 2 (c) of the Administrative Tribunals Act 1985. This shows that the employees of High Courts stand on an entirely different footing from those coming within the purview of the Central administrative Tribunal.

(iii) High Courts have wide jurisdiction whereas the jurisdiction of Central Administrative Tribunal is limited to adjudicating the service conditions and the matters relating to Central Government employees only. High Courts are required to follow Civil Procedure Code and Criminal Procedure code whereas Central administrative Tribunal has to follow its own rules of procedure which are entirely different and much lesser in magnitude than those followed by the High Courts. Thus no parity can be sought between Central Administrative Tribunal and the High Courts. In *M.B. Majmudar vs. UOI* ( 1191 (14) ATC (SC) 904), the Hon'ble Supreme Court held that the assumption that the Tribunal is equated with High Court in all respects is fallacious.

(iv) The Private Secretaries to secretaries in Ministries/Departments of the Government of India have complex duties as compared to the Private Secretaries to the Chairman/Vice Chairman in the Central Administrative Tribunal. In the Ministries/Departments, the Private Secretaries during office hours and before and after office hours as also on holidays. On the other hand, the Vice Chairman/Members have to discharge quasi judicial functions in Court for most parts of the day and, therefore, their Private Secretaries do not have as hectic a schedule or as demanding a job as the Private Secretaries to secretaries in the Government of India.

(v) The eligibility conditions for appointment as Private Secretary in Central Administrative Tribunal are far too lower than those prescribed for Private Secretaries (CSS) to Secretary to the Government of India.

(vi) The parity in pay scales is being claimed not with one category but both with High Courts as well as Secretariat offices, who are governed by two different sets of rules and are not under the same employer. The post of Private Secretary in Central Administrative Tribunal is also not interchangeable either with the High Court or Secretariat Private Secretaries."

The Tribunal while dealing with this aspect has observed as follows:-

"The respondents have sought to justify the grant of higher pay scales to the Private Secretaries attached to the Secretaries to the Government of India and equivalent posts on the ground that they have more onerous duties and responsibilities compared, to those working in the C.A.T. According to them, the Private Secretaries to the Secretaries in the Ministries/Departments of the Government of India have to remain at the beck and call of Secretaries during office hours and even before and after office hours as also on holidays. Be that as it may, there is no material to support their contention that the Private Secretaries to the Vice Chairman in the C.A.T. have to discharge much less functions in terms of quality and quantity. In our opinion, the duties and responsibilities of the posts of Private Secretary to the Vice Chairmen are comparable to those of his counterparts in the Central Government and in the Delhi High Court. They have to remain at the beck and call of the vice Chairmen and to remain in the office beyond office hours and attend to dictation work at their residence even on holidays. In the Central Secretariat patten of working, the Secretary is assisted by a large number of subordinate officers from Section Office to Additional Secretary. The Chairman and Vice Chairmen are also entrusted with administrative work, in addition to their judicial work. They have to manage with the assistance rendered by the Private Secretary and the Curt Officer in the proper and efficient discharge of functions which makes the job of Private Secretaries quite arduous and onerous. Thus, their duties also involve high integrity, confidentiality and efficiency as in the case of the Private Secretaries to the Secretaries to the Government of India."

We are unable to accept the view expressed by the Tribunal throwing the burden on the respondent to substantiate the point. On the other, it is for the petitioner to substantiate the point by giving materials. In the State of Madhya Pradesh & Anr. vs. Pramod Bhartiya & Ors. 91993 (1) SCC 539), this Court held as follows:-

"It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish that right to pay, or the plea of discrimination as the case may be."

Further in the absence of any pleading by the respondent in his affidavit, the Tribunal has given certain facts regarding the duties of Private Secretaries attached to the Chairman and Vice Chairmen of the Tribunal. We consider that it would have been appropriate if the respondent has given such materials by filing affidavit and other documents. In another place, the Tribunal has stated that "There is no reason or explanation why the respondents did not undertake a review of the recruitment rules relating to the Private Secretaries of the C.A.T. as they are also attached to Chairman and Vice Chairman, who are having pay scales equivalent to that of Cabinet Secretary (or Chief Justice of High Court) and Secretaries to Central Government (or Judges of High Court) and make appropriate provisions in the rules with a view to remove the existing anomalies. "Here also one way of disposal of the matter would have been to direct the appropriate authority to take up the review of the recruitment rules and instead the Tribunal undertook that task and gave directions which would amount to amendment of rules.

Further we are of the view that the Tribunal has not considered all the aspects brought to its notice by the appellants in the counter affidavit. Still further in the light of the order passed by the Tribunal. The appellants have brought to the notice of this Court in SLP certain facts about the service of the respondent. It is stated in paragraph III (v) as follows:-

"III (v). At this stage it is necessary to point out that the Respondent herein was holding the post of Grade 'B' Stenographer in the Department of Personnel and Training on an ad hoc basis from 12.8.1981 and was selected for the post of Private Secretary in the Central Administrative Tribunal on deputation with effect from 1.11.1985. He was absorbed there on 1.11.1989. In the Central Secretariat rules for promotion to the grade of Principal Private Secretary were framed on 16.6.1989 and were given retrospective effect from 1.3.1989. The actual promotions were made with effect from 11.5.1989. In the Central Secretariat last general category candidate promoted as Principal Private Secretary belongs to the 19/8 Select List of Grade 'B' and the Respondent would have been too junior to be considered had he continued in the Central Secretariat Stenographers Service. Since the Respondent was absorbed with effect from 1.11.1989 only, there is no justification for allowing him the scale of Rs. 3000- 4500 with effect from 7.10.1987. Moreover only the approved service rendered in the grade would count for purposes of eligibility for promotion. Therefore, in the case of the Respondent only the regular service rendered by him in Grade 'B' and Grade 'A' of the Central Secretariat Service or the Service rendered in the Central Administrative Tribunal can be counted."

Here again there is no denial by the respondent.

This aspect also required consideration In view of what is stated above, we set aside the order of the Tribunal under appeal and remit the matter for fresh in accordance with law. No costs.