

GAHC010012082013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6231/2013

PJ MOHANA PANICKER and 36 ORS
GS - 157758Y STENO-A HQ- 756 BRTF PIN- 930756 C/O 99 APO

VERSUS

THE UNION OF INDIA and 5 ORS
REP. BY THE SECRETARY, MINISTRY OF ROAD, TRANSPORT and HIGHWAY
BORDER ROADS DEVELOPMENT BOARD BRDB, ROOM NO. 418, 'B' WING
SENA BHAWAN, NEW DELHI- 110011.

Advocate for the Petitioner : MR.D BORAH,

Advocate for the Respondent : ASSTT.S.G.I.,

Linked Case : WP(C)/7209/2013

BAL KRISHAN SHARMA and 14 ORS
S/O- LT. BRAM VIRAT SHARMA
GS- 155461Y
OFFICE SUPDT.
HQ CE P SETUK
PIN- 931713
C/O- 99 APO.

2: DINESH CHANDRA
S/O- LT. GARIV DASS

GO- 004074N
PVT SECY. HQ CE P SETUK
PIN- 931713
C/O- 99 APO.

3: RAJ KUMAR PAL
S/O- SHRI A K PAL
GS- 178637L ASSTT HQ CE P SETUK
PIN- 931713
C/O- 99 APO.

4: DASARI RAVI KUMAR
S/O- SHRI DASARI SATYANARAYANA
GS- 180002L
ASST HQ CE P SETUK
PIN- 931713
C/O- 99 APO.

5: SAJI KUMAR KR
S/O- LT. RAMAKRISHNAN NAIR
GS- 16120W
STENO-A HQ CE P SETUK
PIN- 931713
C/O- 99 APO.

6: RAVI RAMAN
S/O- SHRI RAJENDRA PRASAD SINGH
GS- 178645K
STENO-A
HQ CE P SETUK
PIN- 931713
C/O- 99 APO.

7: KRIPAMOY BARDHAN
S/O- LT. KAMINI BARDHAN
GS- 161227Y
ASST
HQ CE P SETUK
PIN- 931755
C/O- 99 APO.

8: SIKANDAR MAHATO
S/O- SHRI DEBI MAHTO
GS-176073P
ASST HQ CE P SETUK
PIN- 931755
C/O- 99 APO.

9: SAROJ KUMAR KARAN
S/O- CHANDRA KISHORILAL KARAN
GS- 177887A
STENO- A
HQ CE P SETUK
PIN- 931755
C/O- 99 APO.

10: KOLACHINA SRINIVASA RAO
S/O- BHIMA SANKARA RAO
GS-180003N
ASST 1629 PNR COY GRFEF P SETUK
PIN- 931629
C/O- 99 APO.

11: GANGADHARAN VIDYADHARAN
S/O- LT. V GANGADHARAN
GS- 155816Y
ASST 1077FD WKSP GREF P SETUK
PIN- 931077
C/O- 99 APO.

12: DINA NATH
S/O- LT. JULFI RAM
GS- 1633231A
ASST 1649 PNR COY GREF PIN- 931649
C/O- 99 APO.

13: DIPAK KUMAR GHOSH
S/O- LT. A N GHOSH
GS- 155606 - Y
OFFICE SUPDT. LC DGBR
C/O- 99 APO.

14: TR SOMAN
S/O- K. VASUDEVAN
GS- 158133W
STENO-A
HQ 47 BRTF
PIN- 930047
C/O- 99 APO.

15: S ELAMURUGAN
S/O- S SUBRAMANIYAN
GS- 171489-H
ASST 130 RCC GREF
PIN- 930130
C/O- 99 APO.

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY THE SECY.
MINISTRY OF ROAD
TRANSPORT and HIGHWAYS
BORDER ROADS DEVELOPMENT BOARD BRDB
ROOM NO. 418
'B' WING
SENA BHAWAN
NEW DELHI- 110011.

2:THE SECRETARY
MINISTRY OF FINANCE
DEPTT. OF EXPENDITURE
NORTH BLOCK
NEW DELHI- 110001.

3:THE SECY. PERSONNEL
DEPTT. OF PERSONNEL AND TRAINING
MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS
NORTH BLOCK
NEW DELHI- 110001.

4:THE DIRECTOR GENERAL
BORDER ROADS ORGANIZATION BRO
SEEMA SADAK BHAWAN
RING ROAD
DELHI CANTT.
NEW DELHI- 110010.

5:THE PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS BORDER ROADS
SEEMA SADAK BHAWAN
RING ROAD
DELHI CANTT.
NEW DELHI- 110010.

Advocate for : MR.D BORAH
Advocate for : MR.N BARUA appearing for THE UNION OF INDIA and 4 ORS

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. D. Borah, Advocate.
For the Respondents : Mr. R.K.D.Choudhury, Dy.SGI.
Date of Hearing : 09.02.2024, 30.07.2024

Date of Judgment : 22.08.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. D. Borah, learned counsel for the petitioners. Also heard Mr. R. K. D. Choudhury, learned Dy.SGI representing the Union of India.
2. As agreed to by the learned counsels for the parties, these two writ petitions are taken up together for final disposal as they involve similar issues and cause of action.
3. The present writ petitions are filed assailing the following orders:-

I. Order dated 14.12.2009 issued by respondent No. 2 i.e. the Secretary, Department of Expenditure, Ministry of Finance, Government of India to the Joint Secretary (AT&A), DOPT granting the benefit of fixation for the merged scales in Rs.7450-11,500/- with effect from 01.01.2006 accordance with 6th CPC pay-scale of 9300-34800/- and grade pay of Rs. 4600/- including fixation at the minimum of the pay i.e. Rs. 7450 X 1.86 + 4600 = Rs. 18,460/-to only the Assistants/PA/Steno-C of the Central Secretariat Services (hereinafter referred to as CSS) and according to the petitioners such benefit has not been granted to the Field Office Assistant/Steno-A in the organization like BRO to which the petitioners belong.

II. The other challenge is an Office Memorandum No. 20/29/2006-CS.II dated 25th September, 2006, whereby the pay scale of the Assistants and Steno Grade C (PA) of CSS were upgraded from Rs. 5500-175-9000/- to Rs. 6500-200-10,500/- w.e.f. 15th September, 2006 and according to the petitioners, by way of this Office Memorandum also, their rights were not considered.

III. The yet another challenge is Office Memorandum F. No. 1/1/2008-IC dated 13.11.2009 whereby the benefit of Grade Pay of Rs. 4600/- was granted w.e.f. 01.01.2006 to those employees who were in the scale of pay Rs. 6500-10500 in terms of 5th CPC. Thus, it is the case of the petitioners that resultantly, they were also deprived from such benefits for the reason that they were not granted the benefit in the 5th CPC. According to the petitioners, the petitioners were also deprived from such benefits.

IV. Another challenge is an Office Memorandum F. No. 1/1/2008-IC dated 16.11.2009, whereby the Field Office Assistants/Steno-A like the petitioners were denied the grade pay of Rs. 4600/- in the pay scale of Rs. 9300-34800/-.

V. The petitioners have also challenged the Office Memorandum No. 20/29/2006-CS II dated 14.11.2006, whereby the Stenographers in Grade D were granted benefits depriving the petitioners who are similarly situated but posted in the field.

VI. Thus, the basic case of the petitioners is discrimination of the equivalent employees working in the CSS vis-à-vis the employees posted in field organisations like the petitioners i.e. the Border Roads Organization who are attached to a field duty.

4. Before advertng to the arguments advanced by the learned counsel for the parties, let the facts of the case be recorded in a nutshell in the following

manner:

- I. The petitioners were all serving as Assistant / Steno A/ Private Secretary in the Border Roads Organization (BRO). On 25.09.2006 by the impugned OM dated 25.09.2006 respondent employer upgraded the pay scale of Assistant / Steno Grade C / PA of Central Secretariat services w.e.f. 15.09.2006. Such OM was issued 10 days prior to the constitution of 6th CPC. The grievances of the petitioners are that they are at par with the central secretariat service though they are posted in field offices.
- II. Thereafter, on 29.08.2008 the 6th CPC recommended some structural scale up-gradation in respect of field office assistant/ Steno A viz-a-viz secretariat assistant, which was accepted and approved by the Government and notified on 29.08.2008 by the Ministry of Finance.
- III. Thereafter, impugned notification dated 13.11.2009 was issued providing that the posts, which were in the scale of Rs. 6,500/- to 10,500/- in terms of 5th CPC as on 01.01.2006 have been granted grade pay of Rs. 4600/- with 01.01.2006 itself. However, such benefit was granted to those, who were in 5th CPC scale of Rs. 6,500/- 10,500/- as of 01.01.2006 and deprived the petitioners of such benefits.
- IV. Thus, according to the petitioners, one more up-gradation was granted to the secretariat assistant in the 6th CPC structure depriving the petitioners.
- V. In the meantime, on 14.11.2006 scale placement and fixation effects were also granted to the Secretariat UDCs / Steno D and thus according to the petitioners, this has further burdened and caused the second instance of aggravation of pay structural disparity between the field office assistant/ Steno A and secretariat assistants etc.
- VI. Subsequently, the petitioners being aggrieved by the disparity between

the office assistant/ Steno etc. posted in the secretariat service and the field offices filed the writ petitions.

5. Mr. Borah, learned counsel for the petitioner relying on the judgment of the Delhi High Court in **D.G.O.F. Employees Association and Anr –vs- Union of India and Ors** (W.P.(C)/4606/2013), contends that the issue raised in this writ petition was raised by similarly situated Field Office employees i.e. Director General of Ordnance Factory Employees and the issue has been settled by the said judgment and on being challenged by the Union of India, the Hon'ble Apex court re-affirmed that there is a historical parity between the secretariat UDC/ Steno D Plus/ Office Assistant etc. and similarly situated employees in field offices. Therefore, the present writ petitions are covered by the determination made in the aforesaid judgment. It is the contention of the petitioners that BRO and Director General of Ordnance Factories are both field offices and the employees association under the Director General of Ordnance Factories had filed the writ petition assailing the order dated 14.12.2009 and 25.09.2006, which are also under challenge in the present writ petitions.
6. According to the learned counsel, having the historical parity between the secretariat employees and field employees being affirmed, the petitioners are also entitled to the benefits granted to their counterparts and therefore a direction for fixation of salary in terms of the judgment of the Delhi High court as affirmed by Hon'ble Supreme court should be issued.
7. Per contra, Mr. R.K.D.Choudhury, learned Dy.SGI submits that there is no historical parity inasmuch as such determination of parity between two sets of employees is required to be done by an expert authority like the Pay Commission and it may not be a job of a writ Court in exercising its power of judicial review. According to him, the pay structure has evolved keeping in mind several factors like the method of recruitment, the level at which recruitment is made, the

hierarchy of service in a given cadre, minimum educational/technical qualifications required, avenues of promotion, the nature of duties and responsibilities, etc. Therefore, even though the nomenclature of the posts held by the petitioners and those in CSS and Central Secretariat Stenographer Services (CSSS) may be the same or even though the nature of duties and responsibilities be the same or similar, the State may still maintain different identities of these two cadres as there could be inter-se distinctions between them. Therefore, the action of the respondents may not be interfered in the exercise of this Court's power of judicial review. Mr.Choudhury learned Dy.SGI in support of such contention relies on the decision of the Hon'ble Apex Court in the case of **Secretary, Finance Department &Ors –Vs- West Bengal Registration Service Association &Ors** reported in **1993 Supp1 SCC 153**.

8. Mr. Choudhury, learned Dy.SGI, further contends that the determination made by the Hon'ble Delhi High Court in the case of **D.G.O.F. Employees Association (supra)** and affirmed by the Hon'ble Apex Court, was made in the backdrop of a determination made by the Central Administrative Tribunal, which is not the case in the present petitions and therefore, such judgment shall have no application in the present case.
9. Mr. Choudhury, learned Dy.SGI, further contends that the grant of pay scales or determination of the same is a purely executive function and the writ court should not interfere with the same. In support of such contention, he relies on the decisions of the Hon'ble Apex Court in the case of **S. C. Chandra and Others –Vs- State of Jharkhand and Others** reported in **(2007) 8 SCC 279** and in the case of **Steel Authority of India Limited and Others –Vs- Dibyendu Bhattacharya** reported in **(2011) 11 SCC 122**.
10. Countering such argument, Mr. Borah, learned counsel for the petitioner submits that in the case in hand, the 6th CPC itself has held that the petitioners

and their counterparts CSS have parity and in similar circumstances, the Hon'ble Delhi High Court has already held that there has been a historical parity for decades till the Office Memorandum dated 25.09.2006 was issued and such Office Memorandum was issued only 10 days before the constitution of the 6th CPC.

11. I have given anxious consideration to the submissions advanced by the learned counsel for the parties.
12. The fundamental grievance of the petitioners is that though there has been historical parity between CSS employees and the field office employees for 10 years even after the 5th CPC recommendation and its implementation, however, by a singular event i.e. the order dated 25.09.2006, a change in such parity was interfered and it was not the result of 6th CPC recommendation. Therefore, such an impugned order is liable to be set aside and the petitioners are liable to be granted an equal scale of pay.
13. The Delhi High Court in the **D.G.O.F. Employees Association (supra)**, so far relating to the impugned Notification dated 25.09.2006 concluded the following:-
 - I. The parity between the CSS employee and others existed for 10 years even after the 5th CPC recommendation and its implementation. The singular event, that brought about the change was not the result of the 6th CPC recommendation, it was the intervening up-gradation of the pay scale that existed for assistance in all these organizations pending acceptance of those recommendations.
 - II. There were four decades of pay parity. Even one decade after the 5th CPC recommendation and such parity was sought to be disturbed based on the Office Memorandum dated 25.09.2006 i.e. just prior to the

6th CPC was set up.

III. Save and except the point of departure (Order dated 25.09.2006), which is the starting point of discrimination, there is no basis at all for disturbing the Ordnance Factory employees who were classified along with non-secretariat employees in the matter of grant of same pay scales.

IV. The justification of the respondents for the implementation of the 6th CPC recommendation is illogical and artificial; they are not based on any nexus with the objective of scientific pay revision, based on the need to have separate pay scales, differing from others who formed part of the same class.

V. A hyper or over-classification is created, which has been warned by the Hon'ble Supreme Court in ***Roop Chand Adlakha –Vs- Delhi Development Authority*** reported in ***1988 Supp (3) SCR 253***. The O.F. employees were treated historically as equals to CSS/CSSS employees and enjoyed equal pay and all benefits flowed from equal pay.

14. Such a decision of the Delhi High Court was put to challenge in the Supreme Court by the Union of India in ***Union of India and Ors –Vs-D.G.O.F. Employees Association and Anr (Civil Appeal No. 1663 of 2016)*** and the Hon'ble Supreme Court, while upholding such determination made by the Delhi High Court, concluded that while determining the historical parities between the employees, posted at CSS and outside Secretariat Services, the High Court has not entered into the classification or comparative equality between the employees under CSS and Field Service. What Delhi High Court did is that it had uphold the historical parity and on the basis of historical parity, such an order can be passed.

15. In the case in hand, there is no dispute that the petitioners are also treated to be unequal on the basis of the Office Memorandum dated 25.09.2006 inasmuch

as they are also discriminated against their counterpart in CSS.

16. There is also no dispute that under the Ministry, certain persons are under CSS i.e. those are posted in the Secretariat Office at New Delhi and the others like the petitioners, who are posted in field services and such field services include the Border Roads Organization, Directorate General of Ordnance Factory etc. The writ petition before the Delhi High Court was preferred by the employees of Ordnance Factory and the present petitioners are employees under Border Roads Organization. Admittedly both are field offices under the Ministry and both were aggrieved by the same decision. The DGF Employees association initially challenged the impugned action before the Central Administrative Tribunal and the petitioners preferred the preset batch of writ petitions before this Court.

17. In the aforesaid backdrop, let this court first take note of the recommendations of the 6th CPC. Relevant portion of the recommendation of the 6th CPC is also annexed to the petition as annexure P3. Such annexure is also not under dispute. Annexure P3 is the Chapter 3.1 of the recommendation of the 6th CPC and said recommendation also accepts the historical parity between the employees under CSS and Field Services. The aforesaid paragraph is quoted herein below:-

“3.1.4. Posts where parity exists and other posts: A parity has long been established between the posts of Lower Division Clerk (LDC) and Upper Division Clerk (UDC) in Secretariat and Field Offices. The position becomes different for posts above UDC level; with the Assistant in Secretariat Offices being placed in higher pay scale vis-à-vis those working in field offices. Earlier, the respective pay scales of Rs. 5500-9000 and 5000-8000 existed for Assistants in Secretariat and in Field offices. This disparity was aggravated in 2006, when the Government further upgraded the pay scales of Assistants, belonging to Central Secretariat Service to Rs. 6500-10500 (emphasis

supplied).

18. Certain recommendations at paragraph 3.1.14 made by 6th CPC, relevant for the determination of this case is also quoted herein below:-

”3.1.14 Recommendations for Non-Secretariat Organizations:- *In accordance with the principle established in the earlier paragraphs, parity between Field and Secretariat Offices is recommended. This will involve merger of few grades. In the Stenographers cadre, the posts of Stenographers Grade II and Grade-I in the existing scales of Rs. 4500-7000/ Rs. 5000-8000 and Rs. 5500-9000 will, therefore, stand merged and be placed in the higher pay scale of Rs. 6500-10500. In the case of ministerial post in non-Secretariat Offices, the posts of Head Clerks, Assistants, Office Superintendent and Administrative Officers Grade II in the respective pay scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 will stand merged. The existing and revised structure in Field Organization will, therefore, be as follows:-*

Designation	Present pay scale	Recommended pay scale	Corresponding Pay Band & Grade Pay	
			Pay Band	Grade Pay
LDC	3050-4590	3050-4590	PB-1	1900
UDC	4000-6000	4000-6000	PB-1	2400
Head Clerk/Assistant/Steno Grade II/equivalent	4500-7000 5000-8000			

Office Superintendent/Staff/Equivalent	Grade			
	5500-9000			
Superintendent/Asst. Officer/Secretary/Equivalent	Admin/Private	6500-10500	PB-2	4200
	6500-10500			

19. The 6th CPC also made the following recommendations in paragraphs 7.39.5 and 7.39.6 so far the same relates to Border Roads Organization:-

“7.39.5, Border Roads Organisation: *The Boarder Roads Organisation (BRO) is a road construction executive force, integral to and in support of the Army. It started operations in 1960. The BRO was brought into being to construct and maintain roads in the border areas, classified as General Staff (GS) roads that are developed and maintained with the funds provided by the Border Roads Development Board (BRDB), through the Department of Road Transport and Highways. Besides GS roads, BRO also executes Agency Works, which are entrusted to it by other Central Government ministries and departments. The funds for border road development are also channelized through the Ministry of Surface Transport to the Border Roads Organisation.*

7.39.6. General Reserve Engineer Force (GREF):- *General Reserve Engineer Force (GREF) is the force created to execute the various road construction programmes under BRO. The force comprises personnel recruited directly as well as deputations from the civilian departments and Defence Forces. Members of the GREF are governed by CCS Conduct Rules and are also*

subject to certain provisions of Army Act, 1950 and Army Rules, 1954. The members of GREF are governed by CCS Rules but allowances applicable to other Central Government Departments are not automatically extended to them. The force has neither the benefits of pay structure and allowance applicable to civilians nor those applicable to Defence Forces. The disciplinary matters are dealt under two sets of rules- Army Act, 1950 and CCS (CCA) Rules, 1965. It is open to the disciplinary authority to proceed under either set of rules which is confusing and there is a strong possibility of misuse. Further a GREF Chief Engineer cannot exercise disciplinary powers over any Army person. This hampers efficient functioning. For proper administration and to clear any ambiguity over status, framing of the GREF rules is essential. The Commission, therefore, recommends that separate rules to regulate service conditions of GREF personnel may be formulated by the Government at the earliest. The Commission is not recommending Defence Forces status for GREF personnel as it has repercussions on applicability of Article 311 of the Constitution which does not apply to persons in defence service but affords protection against dismissal, removal or reduction in ranks of persons employed in civil capacities under the Government."

20. So far relating to the Superintendent Grade II and parity with the Secretariat, the recommendation is discernible in paragraphs 7.39.23 and 7.39.24. The relevant portions are quoted herein below:-

“7.39.23. Superintendent Grade II: *The Commission, accordingly, recommends that the post of Superintendent Grade II may be placed in the Pay Band PB-2 of Rs. 8700-34800 along with a grade pay of Rs. 4200 corresponding to the pre-revised scale of Rs. 5000-8000 that is now being merged with the scales of Rs. 5500-9000 and Rs. 6500-10500. Other posts similarly placed and carrying minimum qualification of diploma in Engineering should also be extended this pay scale.*

7.39.24.. Parity with Secretariat: *the administrative cadre has demanded higher pay scales on par with those existing in the secretariat. The Commission has already recommended parity between similarly placed posts in headquarter organizations and field office in Chapter 3.1 of the report. These recommendations will be extended in the extant case as well."*

21. The aforesaid recommendation of the pay commission leaves no room of doubt in the mind of this court that the case of the petitioners is squarely covered by the determination made by the Delhi High Court in **D.G.O.F. Employees Association (supra)** affirmed by the Hon'ble Apex Court in **Union of India and Ors –Vs-D.G.O.F. Employees Association and Anr** (supra) and that 6th CPC, itself concluded that the parity has long been established.
22. From the undisputed facts recorded herein above, there is also no doubt in the mind of this Court that parity between the CSS employee and others in field offices including the petitioners, existed and such parity was sought to be disturbed based on the impugned Office Memorandum dated 25.09.2006 i.e. just before the 6th CPC was set up. and such disparity further aggravated at different stages. Save and except the Order dated 25.09.2006, which is the starting point of discrimination, there is no basis at all for discriminating against the petitioners, posted in field offices and all throughout been granted parity along with secretariat employees in the matter of grant of same pay scales. Such determination is not only based on the determination made in **D.G.O.F. Employees Association (supra)** by the Delhi High Court, but the 6th CPC also concludes the same.
23. Mr. R. K. D. Choudhury, learned Dy.SGI, is correct in arguing that the determination of parity between two sets of employees is required to be done by an expert authority like a pay commission and that same may not be a job for a

writ court. However, the judgments on which Mr. Choudhury, learned Dy.SGI, places reliance shall not be made applicable in the given facts of the present case more particularly, when the historical parity between the CSS/CSSS employees and employees of Field Offices have not only been held to be existent on the date of issuance of the impugned order but the 6th CPC itself recognizes the existence of such parity and also recommended for correction of the disparities. Therefore, as rightly held by the Hon'ble Apex Court in **D.G.O.F. Employees Association** (supra), there is no requirement in this case to enter into the classification or comparative equality between the employees under CSS and Field Service (petitioners herein) inasmuch as there is an established historical parity.

24. Accordingly, for the reasons recorded hereinabove, the present petition stands allowed in terms of the determination made in **D.G.O.F. Employees Association (supra)** and it is held that the petitioners were treated as equal to the CSS/ CSSS employees and enjoyed equal pay and all benefits flowing from equal pay. Consequently, it is directed that the respondent is required to fix the pay of the petitioners in the same pay scale as was given to similarly placed in CSS/CSSS employees in the ministry with effect from the same date as was first given to them. Consequently, pay fixation and fitment orders shall be issued within 12 weeks from the date when a certified copy of this order is presented before the respondents.
25. Accordingly, the writ petitions stand allowed with the aforesaid terms without any order as to costs.

JUDGE