

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3806/2014
MA 3291/2014

Reserved on: 18.02.2016
Pronounced on: 26.02.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Ramesh Pal (aged about 44 years)
S/o Shri Baljor Singh
R/o B/72A, Mata Wali Gali No.6
Johri Pur Village, Delhi-110094
(Working as Sr. Hindi Translator)
 2. Rajiv Sharma (aged about 42 years)
S/o Shri J.P. Sharma
R/o 207, Ghee Mandi
Pahar Ganj, New Delhi-110055
(Working as Sr. Hindi Translator)
 3. Dharam Pal (aged about 44 years)
S/o late Shri Kanhiya Lal
R/o New Block-12, Aruna Nagar,
Magazine Road, Delhi-110054
(Working as Sr. Hindi Translator)
 4. Dr. Prabodh Kumar Upadhyay (aged about 48 years)
S/o late Shri Triveni Ram Upadhyay
R/o House No.32A, Upper Ground Floor, Gali No.4
Mohan Park, West Guru Angad Nagar,
Laxmi Nagar, Delhi-110092
(Working as Sr. Hindi Translator)
 5. Sangam Jatti (aged about 42 years)
S/o Shri Kalika Jatti
R/o H.No.657, Sector-30
Faridabad-121003
(Working as Sr. Hindi Translator)
 6. Preeti Pokhriyal (aged about 37 years)
W/o Shri Rajiv Pokhriyal
R/o 74B, Hari Nagar,
Ashram, New Delhi
- ... Applicants

(Through Shri L.R. Khatana, Advocate)

Versus

1. Union of India
(through Secretary to the Govt. of India)
Department of Revenue, Ministry of Finance,
North Block, New Delhi-110001
 2. Secretary to the Govt. of India
Department of Expenditure
Ministry of Finance
North Block, New Delhi-110001
 3. Directorate General of Inspection
Customs & Central Excise
(through its Director General)
Drum Shape Building,
IP Estate, New Delhi
 4. Directorate of Data Management
Customs & Central Excise
(through its Director General)
Drum Shape Building,
DLF Centre, GK-II
New Delhi-110048
- ... Respondents

(Through Mrs.Anupama Bansal, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicants are working as Senior Hindi Translator (SHT)/ Junior Hindi Translator (JHT) in the subordinate offices under the administrative control of respondent no.1. The Ministry of Finance, Department of Expenditure revised the pay scale of JHT in the various subordinate offices of the Central Government to Rs.6500-10500 with effect from 1.01.2006 vide OM dated 24.11.2008 with the corresponding Pay Band/ Grade Pay as PB-2 and Rs.4200/- respectively. The OM is reproduced

below for ready reference:

“Consequent upon the implementation of the recommendations of Sixth Central Pay Commission, this Department has received queries from many Ministries/ Departments regarding the revised pay structure applicable in the case of Official Language posts existing in subordinate offices of the Central Government. In this connection, it is clarified that in accordance with the recommendations of the Sixth Central Pay Commission as accepted by the Government, similarly designated posts existing outside the Central Secretariat Official Language Service (CSOLS) cadre in various subordinate offices of the Central Government have been granted the same pay scales as those granted to CSOLS. The Government has notified the following revised pay structure for the Official language cadre belonging to CSOLS:

Designation	Recommended pay scale	(In Rs.)	
		Corresponding Pay Band & Grade Pay	
		Pay Band	Grade Pay
Jr. Translator	6500-10500	PB-2	4200
Sr. Translator	7450-11500	PB-2	4600
Asst. Director (OL)	8000-13500	PB-3	5400
Dy. Director (OL)	10000-13500	PB-3	6100
Jt. Director (OL)	12000-16500	PB-3	6600
Director (OL)	14300-18300	PB-3	7600

2. Our attention was also drawn to corrigendum dated 27.11.2008, suggesting some modifications in the earlier order. Both the orders were communicated by the Ministry of Finance, Department of Revenue to all Chief Commissioners of Customs and Central Excise vide letter dated 15.12.2008 for acting accordingly. Vide OM dated 13.11.2009, the Ministry of Finance, Department of Expenditure granted the revised pay structure of Grade Pay of Rs.4600/- in the Pay Band PB-2 to posts that

existed in the pre-revised scale of Rs.6500-10500 as on 1.01.2006 and which were granted the normal replacement pay structure of Grade Pay of Rs.4200/- in Pay Band PB-2.

3. Learned counsel appearing on behalf of applicants referred to OA 107/2011 filed by one Ms. T.P. Leena, JHT before the Ernakulam Bench of the Central Administrative Tribunal where the Tribunal allowed the Grade Pay of Rs.4600/- to the applicant therein. It is further stated that the aforesaid order of the Ernakulam Bench in Ms. T.P. Leena (supra) was upheld by the Hon'ble Kerala High Court and the SLP preferred before the Hon'ble Supreme Court was also dismissed (Annexure A-9 and Annexure A-10). It may be noted that in the aforementioned case, the applicant Ms. T.P. Leena had approached the Ernakulam Bench because she was aggrieved by the alleged wrong fixation of pay on grant of first/ second financial upgradation under the Modified Assured Career Progression Scheme (MACPS) and the Tribunal had allowed fixation of pay on first and second upgradation in Grade Pay of Rs.4800/- and Rs.5400/- respectively, which was upheld by the Hon'ble High Court and the SLP dismissed by the Hon'ble Supreme Court.

4. The applicants also relied on the order of the Full Bench dated 14.10.2013 in OA 656 and 953/2012, **P.R. Anandvally Amma Vs. Union of India and others**. Our attention was drawn to para 2 of the order, which is reproduced below:

"2. No specific point for reference is made but in view of the issue framed in the order in OAs 656/2012 and 953/2012 which is as follows:

"Whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of OM dated 13.11.2009 or not."

the same issue has to be held to be the issue referred to the Full Bench."

5. It has been stated that this would make it clear that the issue before the Full Bench was exactly the same which is before the Tribunal in the instant OA i.e. whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of OM dated 13.11.2009 or not. The aforesaid OA was allowed and the Tribunal held that the Grade Pay of JHT in subordinate offices with effect from 1.01.2006 would be Rs.4600/-. This order of the Tribunal was challenged before the Hon'ble High Court of Kerala and after considering the matter in depth, the High Court dismissed the Writ Petition.

6. The learned counsel representing the applicants stated that despite the settled legal position, the respondents have denied the applicants the Grade Pay of Rs.4600/-. Being aggrieved, they have filed the instant OA seeking the following reliefs:

"A. That this Hon'ble Tribunal may be pleased to declare the impugned instructions dated 8.8.2014 and the consequential orders dated 14.10.2014 and 13/27.10.2014, as illegal, arbitrary, iniquitous, unjust, unreasonable, perverse and discriminatory and quash and set aside the same in the interest of justice and hold that the applicants are entitled to the Grade Pay of Rs.4600/- as Junior Hindi Translators and Rs.4800/- (next grade pay in

the hierarchy) as Senior Hindi Translators and direct the respondents to continue to pay the same to the applicants.

B. Award exemplary costs in favour of the applicants.”

7. Communication dated 8.08.2014 (Annexure A-1) is the letter issued by the Ministry of Finance, Department of Revenue to all the Chief Commissioners and all DGs conveying that the JHT would be in Pay Band 2 with Grade Pay of Rs.4200/-. Order dated 14.10.2014 again clarifies the position and order dated 13.11.2009 is also a similar order on the subject.

8. Learned counsel for the applicants further drew our attention to the judgment in **Official Liquidator Vs. Dayanand and others**, (2008) 10 SCC 1 and specifically to para 78 onwards regarding judicial discipline. Their Lordships held as follows:

“There have been several instances of different Benches of the High Courts not following the judgments/ orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by the Supreme Court without any tangible reason. Likewise, there have been instances in which smaller Benches of the Supreme Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system.

It is distressing to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so.

Disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation.

Predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last the six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

In our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law."

9. Learned counsel for the respondents argued that in the Recruitment Rules (RRs) of 18.03.2009, the scale of JHT is shown as PB-2 with Grade Pay of Rs.4200/-. Further in the RRs of 16.12.2015, again JHT have been shown in PB-2 with Grade Pay of Rs.4200/-. Our attention was also drawn to Annexure R-4, which is copy of notice of Junior Translators in (CSOLs) Examination 2013 in which the pay scale is again shown with Grade Pay Rs.4200/-. It is thus argued that the RRs as well as the advertisements clearly indicate the Grade Pay as Rs.4200/-, which has not been challenged by the applicants at all.

10. Learned counsel for the respondents also placed reliance on orders pronounced on 23.07.2015 in OA 166/2014, **Saurabh Arya and others Vs. Union of India and another**. This matter was also for grant of Grade Pay of Rs.4600/- for Junior Translators in CSOLS, giving them the benefit of the decision of the Ernakulam Bench of the Tribunal in Ms. T.P. Leena (supra). In this order, the Coordinate Bench refused to interfere in the matter and directed that the issue should be referred to the 7th Pay Commission for recommendations. It is stated that while passing its order, in para 7 the Coordinate Bench had noted the order passed by the Full Bench of the Tribunal (Ernakulam) in P.R. Anandvally Amma (supra) and connected cases but only the following has been recorded in para 7 of the order:

“Though the Full Bench of this Tribunal (Ernakulam Bench) in P.R. Anandvally Amma v. Union of India & others (O.A. No.656/2012 with connected case) decided on 14.10.2013 could declare that the Junior Hindi Translators are entitled to the Grade Pay of Rs.4600/- but despite our repeated asking, learned counsel for applicants could not point out any reasoning or analysis for such view of the Tribunal. The only plausible reasoning can be the decision in O.A. No.107/2011 (supra), which is confirmed by the Hon’ble High Court of Kerala at Ernakulam in O.P. (CAT) No.467/2011 (supra). Nevertheless, as has been noted above, in the said case also, the controversy involved was regarding the pay scale in which the Junior Hindi Translators were entitled to financial upgradations.”

11. It is, therefore, argued that since the Coordinate Bench referred to the case of Ernakulam Bench and sent the matter to the Pay Commission, the Tribunal cannot consider the question of grant of Grade Pay of Rs.4600/- now.

12. The learned counsel for the respondents also referred to order dated 17.10.2012 in OA 202/2011, **K.K. Vinod and others Vs. Union of India and others** in which the same issue was before the Ernakulam Bench of the Tribunal and the OA was dismissed. Similarly in OA 350/00120/2014, **Swati Biswas Vs. Union of India & ors.**, the Calcutta Bench of the Tribunal examined the same issue and the OA was dismissed. The learned counsel thus argued that in view of the fact that in the RRs as well as in the advertisement, the Grade Pay has been indicated as Rs.4200/- and there has been no challenge to the RRs or the advertisement as also in view of the fact that this Tribunal in different cases cited above have refused to interfere and dismissed such requests, the prayer of the applicants may be rejected.

13. It was argued that in the order dated 8.08.2014, it is clearly mentioned that the post of JHT was not in the pre-revised scale of Rs.6500-10500 as on 1.01.2006 but in the pre-revised scale of Rs.5500-9000 and, therefore, the provisions of OM dated 13.11.2009 would not be applicable in the case of JHT. It is stated that the Grade Pay of Rs.4600/- was granted to only those posts which were in the erstwhile pay scale of Rs.6500-10500 and it will be clear from the OM dated 13.11.2009 that the pay scales of 5000-8000, 5500-9000 and 6500-10500 were merged and were given the replacement Grade Pay of Rs.4200/- but the posts in the pay scale of Rs.6500-10500 were granted the Grade Pay of Rs.4600/-.

14. In reply, the learned counsel for the applicants states that Saurabh Arya (supra) would not apply here as in that case, the applicants belonged to CSOLS whereas the applicants in the present OA belong to a different service. Moreover, the Coordinate Bench also has not considered the Full Bench order at all. Regarding Swati Biswas (supra), it was pointed out that in that case, no reference has been made to the Full Bench order of the Ernakulam Bench in P.R. Anandvally Amma (supra) and, therefore, it is per incuriam. It was reiterated that the Full Bench order of the Ernakulam Bench being upheld by the Hon'ble Kerala High Court still holds the field and there is no way in which the applicants can be denied Grade Pay of Rs.4600/-.

15. We have heard the learned counsel for the parties and gone through the pleadings available on record.

16. It would be seen from the judgment of the Full Bench of the Ernakulam Bench of the Tribunal that the issue "whether JHTs in the Subordinate Offices of the Central Government are entitled to Grade Pay of Rs.4600/- from 01.01.2006 on the basis of OM dated 13.11.2009 or not" was answered in the affirmative and in view of the fact that the Hon'ble High Court also considered and affirmed the decision that JHTs are entitled to Grade Pay of Rs.4600/-, the applicants herein are found entitled to the Grade Pay of Rs.4600/- from 1.10.2006. We have also to accept the contention of the learned counsel for the applicants that Saurabh Arya (supra) cannot be cited as precedent for the reason that this belongs to some other department and

moreover, it did not consider the judgment of the Full Bench though it finds mention in the order. Similarly, Swati Biswas (supra) case is per incuriam as it did not consider the Full Bench judgment.

17. The learned counsel for the applicants also argued that the RRs of 2009 would not apply in any case after the Full Bench judgment came in 2013 and RRs of 2015 can apply only prospectively. As already stated, the Full Bench in P.R. Anandvally Amma (supra) was guided by the fact that there was a High Court of Kerala judgment in O.P.(CAT) 467/2012 confirming the Grade Pay of Rs.4600/- to JHT and in view of that, the said Grade Pay was allowed by the Full Bench. The order of the Full Bench in O.A. 953 and 656/2012, as affirmed by the Hon'ble High Court of Kerala, has not been set aside and still holds the field.

18. The advertisement for JHT Examination 2013 indicating the Grade Pay of Rs.4200/- will not help the respondents and the decision of the Full Bench in P.R. Anandvally Amma (supra) will prevail.

19. In view of the clear finding of the Full Bench on exactly the same issue, we have to hold that JHTs in subordinate offices are entitled to Grade Pay of Rs.4600/-. The OA is thus allowed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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