

HIGH COURT OF DELHI

Bench: V. Kameswar Rao and Justice Rajnish Bhatnagar

Date of Decision: May 27, 2024

W.P.(C) 716/2015, CM APPLs. 5955/2020, 44178/2023 & 53675/2023

UNION OF INDIA & ANR. ... Petitioners

VERSUS

TAPASH BASAK & ORS ... Respondents

Legislation:

Constitution of India, Articles 14 and 16

Recruitment Rules of 2006 for SSB (Secretarial Services)

Subject: Challenge to Tribunal's order addressing pay disparity and service condition issues post-trifurcation of DGS ministerial staff.

Headnotes:

Service Law – Trifurcation of Directorate General of Security (DGS) – Reorganization and Pay Parity – Petition challenging the Central Administrative Tribunal's order directing resolution of service condition disparities among ministerial staff post-trifurcation – Tribunal's directive to devise a package and rectify lacunae affirmed – Relief limited to addressing pay grade disparity for Assistants.

Discrimination in Service Conditions – Held – Tribunal's decision to remand matter to the Union of India for informed decision on grade pay of ₹4,600/- to Assistants in SSB upheld – Parity in pay with counterparts in ARC and SFF mandated – Petitioners to implement within three months – Tribunal's broader directives for equitable treatment endorsed but specific prayer for 15% special allowance not pressed by respondents. [Paras 53-58]

Decision – Tribunal’s Order Upheld – Petition dismissed with direction to the Union of India to comply with Tribunal’s instructions regarding pay parity for Assistants in SSB – Applications for impleadment of additional parties dismissed as they were not parties before the Tribunal. [Paras 51-61]

Referred Cases:

- M.R. Gupta v. Union of India, (1995) 5 SCC 628
- Union of India v. Tarsem Singh, (2008) 8 SCC 648
- Union of India v. Suresh Kumar Nayak, (2010) 15 SCC 10
- Union of India v. Manoj Kumar, (2021) 17 SCC 662
- Bichitrananda Behera v. State of Orissa, (2023) 15 SCR 404

Representing Advocates:

Ms. Pratika N. Lakra, CGSC, Ms. Vanya Bajaj, Adv. for Petitioners

Mr. Sanjoy Ghose, Sr. Adv. with Mr. Chinmaya K. Bhatt, Mr. Himanshu Gautam, Mr. Rohan Mandal, and Mr. Mohit Garg, Adv. for R-25, R-53, R-83 & R-91. Mr. Sagar Saxena, Mr. Parmeet Singh, and Mr. Sarthak Pandey, Adv. for Respondents

.....

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioners challenging the order dated March 17, 2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in the Original Application being OA No.3882/2012 (‘OA’, for short) filed by the respondents herein, whereby the Tribunal has disposed of the OA by stating in paragraphs 58 to 60, as under:

“58. Therefore, even though we are not quashing the orders of reorganization. The effect of such orders in 2001 would not be considered as an impediment. A resultant package shall be devised by concerned authority within three months next and published so that all can make an informed choice or such benefits as is just may be granted and an opportunity be allowed of being heard

III Within three months thereafter on the principles of justice stated above the respondents shall resolve this issue.

59. *The matter is remitted back to the respondents to correct lacunae as pointed out on a practical and logical way and as per law.*

60. *Under the circumstances OA is allowed to the said limits. M.A.No.3320/12 is allowed. In the circumstances of the case there is no order as to costs.”*

2. The case of the respondents before the Tribunal was that, they are civilian ministerial staff of Secretarial Service with the Director General of Security ('DGS', for short) under the Cabinet Secretariat ('CS', for short) of four units (a) Special Service Bureau now Sashastra Seema Bal ('SSB', for short), (b) Aviation Research Centre ('ARC', for short), (c) Special Frontier Force, ('SFF', for short) and (d) Chief Inspectorate of Armament ('CIOA', for short). These four units had a common and combined DGS (Secretarial Service) promulgated on November 4, 1975 with *inter se* seniority and the inter unit transfer liability having four cadres:

i. Secretarial ii. Ministerial iii.
Accounts iv. Stenographer

3. The personnel did not belong to any particular organisation, i.e., SSB, ARC, SFF and CIOA but were merely posted in any one of the organisations. The trifurcation of four organizations took place in 2001. Before trifurcation, the secretarial staff of these four organisation were part of one secretarial service, i.e., DGS (Secretarial Service).

4. Aggrieved by this, one personnel Sukesh Kumar Nayak challenged the validity of the CS order dated August 23, 2001 and the SSB Directorate's order dated December 21, 2001 containing the trifurcation orders of the DGS (Secretarial Service) before Tribunal's, Principal Bench, New Delhi on the ground that the said order did not provide opportunity to the staff of the erstwhile DGS (Secretarial Services) to exercise option for choosing an organization of their choice out of the three organizations. It was his case, allocating staff to other units in the cadre on the basis of „AS IS WHERE IS BASIS“, is arbitrary. The Tribunal allowed the OA vide order dated November 13, 2002, holding that the order by which the joint cadre was created was violative of rights of Sukesh Kumar Nayak.

5. The Union of India challenged the order dated November 13, 2002 by filing a writ petition bearing W.P.(C) 3000/2003 before the Division Bench of this Court. The Division Bench relied upon the circular dated May 18, 1994 issued by the Ministry that the staff are merely posted in any of the

organisations and their services are transferrable among these organisations.

6. The Union of India took a policy decision in January, 2001 to transfer the administrative control of the SSB and CIOA from CS to the Ministry of Home Affairs ('MHA', for short) vide order dated January 15, 2001 and merged ministerial staff of CIOA with that of SSB. As a consequence of transfer of SSB and the CIOA, two units of the CS were transferred to the MHA vide CS order dated August 23, 2001. 7. The writ petition filed before this Court was dismissed on November 6, 2003. The Union of India challenged the judgment dated November 6, 2003 before the Supreme Court in Civil Appeal No. 231/2005. The Supreme Court set aside the order of the High Court and upheld the trifurcation.

8. The case of the respondents before the Tribunal was that, they have been discriminated and put in disadvantageous position, vis-à-vis their counterpart in ARC/SFF, though all belong to the same cadre, it is due to sheer luck the counterparts got posted in ARC and SFF and therefore, there is a violation of Articles 14 and 16 of the Constitution of India resulting in infringement of fundamental rights of the respondents.

9. One of the pleas of the respondents was also that, on the promulgation of the Recruitment Rules for SSB Secretarial Service Rules in the year 2006 and on implementation of the 6th Central Pay Commission, the Assistants / Personal Assistants of SSB have been given grade pay of ₹4,200/- in PB-2 as admissible to the personnel of non-secretarial service whereas some of the counterparts in ARC & SFF were given grade pay of ₹4,600/- in PB-2 as admissible to the personnel of Secretariat Organisation vide CS order dated June 18, 2012. It is also stated that the counterparts of the respondents in other two organisations are also enjoying 15% special allowance by virtue of sheer luck based on their posting in the divided units which benefit is not available to the respondents as they are in SSB by default. It was in this background, the respondents had sought the following prayers before the Tribunal:

"a) Direct the respondents to treat the applicants as part of the DGS Secretarial Service with all benefits which would have accrued to the applicants had they remained in the Service considering all cadres as one for the purpose of conditions of Service and grant the same with effect from 23.08.2001.

b) Direct the" respondents to restructure the secretarial/Ministerial cadres at par and in proportion with the secretarial/Ministerial services of ARC/SFF from

the date of restructuring of secretarial/Ministerial services of ARC/SFF alongwith consequential benefits.

- c) Direct the respondents to treat the applicants in accordance with the RR applicable to ARC/SFF secretarial/Ministerial services since trifurcation.*
- d) Direct the respondents to pay to the applicants pay and allowances including 15 percent special allowance at par with ARC / SSF Secretarial / Ministerial along with arrears from the date of trifurcation.*
- e) Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.*
- f) Award cost of the litigation to the Applicants.”*

10. The case of the petitioners before the Tribunal was that appointment of ministerial staff of the erstwhile DGS (Secretarial Service) who are now borne on the strength of the SSB on the basis of decision taken by the Government of India on August 23, 2001 and merger of SSB Secretarial Staff, have their own statutory recruitment rules and cannot claim parity with the erstwhile DGS (Secretarial Service Rules) for determining conditions of service at par with the DGS (Secretarial Service). The decision of the Government of India was taken in the interest of national security ought not to have been interfered with. The two units namely SSB and CIOA, were transferred from CS to the Ministry of Home Affairs by reviewing the role of SSB. Thus the application of SSB (Secretarial Service) cannot be considered as one homogeneous class for determining conditions of services with reference to the employees of ARC and SFF who have their own statutory Recruitment Rules.

11. It was stated by the petitioners that, no options were sought from the incumbents of the erstwhile DGS (Secretarial Services) for placing them under different organisations i.e. SSB, ARC, SFF on trifurcation of DGS (Secretarial Service) on administrative ground and they were divided into the above three organisations on the basis of '**As Is Where Is Basis**'. It was also stated that the state of affairs of the petitioners have altogether changed as the incumbent SSB is no more in the purview of CS for administrative purpose, more so, having their own statutory recruitment rules governing the conditions of service. Thus, the doctrine of promissory estoppel or legitimate expectation shall not be available to the respondents.

12. The submission of Ms. Pratima N. Lakra, learned CGSC appearing for the petitioners, is that the trifurcation policy was upheld by the Supreme

Court in ***Union of India v. Suresh Kumar Nayak, 2010 (15) SCC 10***. It is her submission that the impugned order / judgment is contrary to the judgment of his Court in ***Ranjit Singh Bisht and Ors. v. Union of India and Ors., in W.P(C) 5451/2012***, wherein this Court had dealt with the challenge to SSB Rules after trifurcation. She has contended that the Tribunal has erred in granting relief in issue which is already settled by the Supreme Court in ***Suresh Kumar Nayak (supra)***. She also has stated that the distinction drawn by the Tribunal with regard to judgment of ***P.C Chinara & Others v. UOI & Others, OA No. 3319/2009*** is misplaced as the same has no applicability in this case.

13. She submitted that the nature of work, job and responsibilities attached to various posts in different cadre of four services or three services after trifurcation has not been compared anywhere and therefore the question of grant of same pay and allowances, including 15% special allowance, at par with ARC/SFF secretarial/ministerial service from the date of trifurcation does not arise.

14. According to her, the issue of pay parity has already been settled by the Supreme Court in the catena of judgments, wherein, for such relief to be claimed, the applicants must compare the nature of duties, jobs and responsibilities, method of recruitment, the eligibility conditions, the recruitment rules, the channel of promotion in the cadre, etc.

15. She submitted that, on November 20, 2006, after notification of SSB (Secretarial Service), the employees of SSB (Secretarial Service) were covered under the category of "non secretarial" staff and were dismembered from the combined seniority list of erstwhile DGS (Secretarial Service) by way of having their own statutory recruitment rules promulgated on November 20, 2006. As they are governed by their own statutory Recruitment Rules, they cannot seek any parity with the employees of ARC and SFF. Even though some seniors have been superseded after trifurcation, the claim of the respondents that their promotional opportunity after trifurcation has been reduced is also denied as per the principle laid down by the Supreme Court; mere chances of promotion are not conditions of service. It is also her submission that, reduction in chances of promotion did not tantamount to change of conditions of service. The right is only to be considered for promotion is a term of service rules.

16. Ms. Lakra submitted, the Tribunal has erroneously concluded that the method adopted by the Government, i.e., '***As Is Where Is***' has caused great detriment and prejudice. She submitted that, much water has been flown

under the bridge and employees have already settled down in their respective departments / units and have become accustomed with the methodology of working in the respective department.

17. According to her, relief (a) as sought in the OA before the Tribunal, is claim for grant of Grade Pay of ₹4800/- and then ₹5,400/- on completion of 4 years service was not extended to SOs and PSs of SSB. Some of the Section Officers ('SOs', for short) and Private Secretary ('PSs', for short) had approached Tribunal in ***P.C Chinara & Others (supra)***. The said OA was decided in favour of the applicants therein. The Department filed an appeal against the Judgment of the Tribunal before this Court vide ***Writ Petition No.7526/2010*** titled ***UOI & Others Versus P.C Chinara & Others***. She stated that this Court had upheld the judgment of the Tribunal. On the basis of the said judgment, the grade pay was extended to the applicants therein only on parity with ARC/SFF. As it has not been extended to all SOs/PSs of SSB, subsequently 03 cases were filed before the Tribunal and before this Court. Thereafter, the Ministry of Finance had conveyed vide MHA UO No.27013/ 49/ 2016-PF.IV/ SSB dated December 08, 2016, the approval for grant of Grade pay of ₹4,800/- and ₹5,400/- on completion of 4 years service in respect of SOs and PSs of SSB at par with the employees of ARC / SFF (CS) also to those who had not resorted to litigation.

18. She stated that the restructuring of a cadre in a department is done in accordance with its own functional requirement and cadre strength. Therefore, the relief prayed for by the respondents for cadre restructuring in SSB in proportion, with Secretarial / Ministerial service of SSB is devoid of merit. She also stated that the recruitment in civilian cadre including SSB Secretarial. Cadre has been stopped in the restructuring of the Force under MHA.

19. She has stated that, consequent upon notification of SSB (Secretarial Services), the respondents / applicants are governed under the revised Recruitment and Promotion rules. Therefore, the relief prayed for that the petitioner to treat the respondents / applicants in accordance with the RRs applicable to ARC/SFF Sectt./Min. services does not merit consideration and is liable to be rejected.

20. According to her, at the time of the trifurcation of the DGS (Secretarial Services) in the year 2001, the respondents were not being paid 15% special allowance. Since the special allowance is granted to the special nature of duties performed and organisation specific, this benefit cannot be extended to the respondents / applicants as they are posted in SSB.

21. She has stated that, the claim of the respondents for the benefit of special allowance and pay parity with the staff of ARC and SFF cannot be accepted because of the fact that, subsequent to transfer of SSB from CS to MHA, all the force personnel including the respondents are governed under the different sets of rules as applicable to the force personnel under MHA. She also stated that the contention of the respondents that they were getting 15% allowance while being posted in DGS is baseless. The said 15% security allowance was only granted to the staff of ARC/SFF only, consequent upon the recommendation of 6th CPC i.e. 2006. The trifurcation recedes the date of grant of the said security allowance. It is also her contention that, in compliance to the orders dated December 02, 2016 and February 07, 2017, the petitioner / Union of India has filed an additional affidavit wherein the correct position regarding grant of pay of special allowances at 15% was responded. The allowance was started in the year 2006 and after the recommendation of Two Men Committee and prior to that, it was non-existent when the SSB was transferred to MHA in the year 2001. Therefore, no question arises for the grant of special allowances to other forces.

22. It is her submission that the contention of the respondents in this writ petition, when claiming that **Suresh Kumar Nayak (supra)** held, in a general fashion that promotion chances have been increased, is wrong. She stated that it only applies to the said case only and that it did not give a general statement, as reproduced as under:-

“21. The respondent has claimed that his chances of promotion have been reduced by transferring his unit to the Ministry of Home Affairs. According to the appellant, even this is not factually correct. The appellant filed an additional affidavit before the High Court in which it was mentioned that as per the combined common seniority of Assistants in the Directorate General of Secretarial Service, as it stood on 23.8.2001 i.e. before trifurcation, respondent Suresh Kumar Nayak was placed at Serial No.116 out of 176 Assistants shown in the seniority list, excluding the Assistants on deputation. After trifurcation of the Directorate General of Secretarial Service in 2001, taking his continuation in the Special Service Bureau as Assistant, his placing in the seniority list of the said unit is at Serial No. 65 out of 112 Assistants. Similarly, he was allotted transferred to Aviation Research Centre on trifurcation of Directorate General of Secretarial Service and is borne on Aviation Research Centre’s strength and his placing in the seniority list would be at Srl. No. 28, out of 46 posts of

Assistants allotted to the Aviation Research Centre. Suresh Kumar Nayak, Assistant was not interested to be transferred/ allocated to Special Frontier Force on trifurcation.

22. According to the learned counsel for the appellant, if the chances of promotion are affected, even then it would not be a case where the Court would be justified in allowing the original application on the ground of infringement of the respondent's fundamental rights under Articles 14 and 16 of the Constitution.

26. In the Chandrakant Anant Kulkarni (supra) this Court has laid down the principle that mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not.

27. In the instant case, even according to the appellant, the chances of promotion have in fact been increased.”

23. Ms. Lakra has stated that the claim of the respondents with regard to equal pay for equal work, the onus is upon the respondents to prove that their case falls under homogenous group so as to claim pay parity. Fixing of pay scale is in domain of executive and Equal pay for equal work requires complete and wholesale identity between two groups, whereas, in present case the respondents are governed by Recruitment Rules SSB 2006.

24. With regard to difference between MHA and DGS, she stated that the CS appointed *Two Men Committee* and implemented its recommendation with respect to personal policies. She has also relied upon the order dated June 14, 2006, which is reproduced as under:-

“Pursuant to recommendations made by Group of Ministers (GoM) on Reforming the National Security System, a Two Man Committee comprising Secretary(R) and, DIB was constituted by the Government for recommendations made by the Two-Man Committee were considered by the Government. The President is pleased to grant concessions as mentioned in Annexure, to the staff of R&AW and DG(S) with immediate effect.”

“Special Security Allowance @ 15% of the Basic Pay and Dearness Pay would be granted to all employees of R&AW / DG (S)”

25. She stated that, the Two Men Committee was not constituted by MHA to regulate the service conditions of SSB. She also submitted that under MHA, Recruitment Rules (Ministerial Cadre) SSB, 2006 were framed. As the Recruitment Rules having been notified, she has relied upon order dated October 12, 2016 of the MHA, which is reproduced as under:-

“G.S.R. 323. – In exercise of the powers conferred by the proviso to article 309 of the Constitution, and in supersession of the Directorate General Security (Secretarial) Service Rules, 1975, so far as they relate to the posts of Junior Accountant, Upper Division Clerk, Lower Division Clerk and Stenographer except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules to regulate the method of recruitment to the Group „C“ posts of Secretarial Service in the Sashastra Seema Bal, namely: -”

26. She stated that, although the writ as well as the Recruitment Rules of 2006, themselves refer to SSB (Secretarial Service), they have been given the grade pay for „Non-Secretarial“ service because of Ministry of Finance UO No. 10/1/2009-IC dated July 02, 2009 which has categorically termed SO/ PS of SSB as „Non-Secretarial“.

27. She has stated that, SSB is under MHA and Recruitment Rules, 2006, have also been notified with respect to service conditions. She has also relied upon an order dated October 12, 2016 of the MHA, as reproduced as under:-

“Subject: Transfer of Civil Wing of SSB to Intelligence Bureau (IB) – regd

The undersigned is...

(i) SSB will transfer 19 Cadres of Civil Wing out of 24 cadres of Civil Wing as indicated in Annexure -1 to IB totalling 2104 posts. These cadres will get integrated with relevant and comparable cadres of IB. They will be governed by service conditions of IB after transfer from SSB. It will be open to IB to fill up those posts after the present incumbents vacate them.

(iii) Further, DG, SSB and Director, IB will mutually decide the detailed implementation modalities, including the issue relating to transfer of assets of SSB Civil Wing from SSB to IB.”

28. She stated that the grade pay has been extended to the respondents only on parity with ARC/SFF in view of **P.C Chinara & Others (supra)**.

Thereafter, the Ministry of Finance extended the benefits to all SOs and PSs of SSB at par with the employees of ARC/SFF. The said order of Ministry of Finance is reproduced as under: *“Finally, Ministry of Finance had conveyed vide MHA UO No. 27013/49/ 2016-PF.IV/ SSB dated 08.12.2016, the approval for grant of Grade pay of Rs. 4800/- and Rs. 5400/- on completion of 4 years service in respect of SOs and PSs of SSB at par with the employees of ARC / SFF (Cabinet Secretariat) also to who had not resorted to litigation.”*

29. She stated that the same has been accepted by respondents in their reply to short affidavit, as reproduced as under:-

“In reply to relief (e), it is submitted that higher grade pay of Rs. 4800/- and Rs. 5400/- (after completion of 04 years regular service) to all Section Officers and Private Secretaries of SSB has already been granted by MHA/MoF. The petitioners are still depriving the Assistants and PAs of SSB due to nonextension of higher grade pay of Rs. 4600/- instead of Rs. 4200/- at par with their counterparts serving under DG(S) Secretarial Service.”

30. According to her, 6th CPC recommendation has granted grade pay of ₹4,800/- in PB II and grade pay of ₹5,400/- in PB-III after 4 years, to those employees of Ministerial / Secretarial posts, which have historical parity with CSS/ CSSS services. However, with trifurcation and formulation of revised Recruitment Rules, SSB (Secretarial Services) bears no parity with CSS/ CSSS cadres as on date. In support of the same, she has relied on the judgment in the case of ***Union of India v. Manoj Kumar, (2021) 17 SCC 662***, held that:

“23. In the end we would like to reiterate that the aspect of disparity between the Secretariat and the Field offices was a matter taken note of by the Commission itself while making the recommendations. Yet to some extent, a separate recommendation was made qua Secretariat Organisations and non-Secretariat Organisations. Once these recommendations are separately made, to direct absolute parity would be to make the separate recommendations qua non-Secretariat Organisations otiose. If one may say, there would have been no requirement to make these separate recommendations if everyone was to be treated on parity on every aspect.”

The fact that they are not in parity with CS is stated within Recruitment Rules, 2006 under Schedule, as reproduced as under:

“Whether benefit of added years of service admissible under Rule 30 of Central Civil Service (Pension) Rules 1972: Not applicable”

This applies to Section Officer (‘SO’, for short), Assistant, Private Secretary (‘PS’, for short), Personal Assistant, Accounts Officer and Accountant.

The MHA vide decision dated April 20, 2011, has held that:-

“CPFs, however does not fall under the category of Secretariat Service.”

In this decision / order, they considered representations of officers aggrieved by different pay grades.

31. She stated that the judgment in the case of ***Union of India v. Manoj Kumar, (2021) 17 SCC 662***, has held that, even if same designation but different controlling authority then there is no equal pay for equal work. After trifurcation, MHA became the Controlling Authority.

32. In support of her submission, she has relied upon the following judgments:

1. ***S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279***
2. ***Canteen Mazdoor Sabha v. Metallurgical & Engineering Consultants, (India) Ltd. &Ors, (2007) 7 SCC 710***
3. ***Federation of All India Customs & Central Excise Stenographers v. UOI & Ors, (1988) 3 SCC 91***
4. ***Harbans Lal &Ors v. State of Himachal Pradesh & Ors, (1989) 4 SCC 459***
5. ***Sanjeev Kumar &Ors v. UOI &Ors, (2017) SCC OnLine***

Del 7701 :-

33. According to her, the decision of trifurcation and transfer of SSB from CS to MHA was taken in the year 2001 and since 2001 the respondents started working under MHA. In the year 2006, the Recruitment Rules of 2006 for SSB were promulgated and since the transfer all the administrative control as well as the cadre control of SSB was vested in MHA since 2001. The respondents were aware about the trifurcation and transfer of SSB to MHA; however, they wake up in the year 2012 after more than 11 years of the decision. She has placed reliance on the judgment of the Supreme Court in

the case titled as ***Bichitrananda Behera v. State of Orissa & Ors. (2023) 15 SCR***

404, has held as under –

“21. Profitably, we may reproduce relevant passages from certain decisions of this Court:

(A) Union of India v Tarsem Singh, (2008) 8 SCC 648:

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal).

(B) Union of India v N Murugesan, (2022) 2 SCC 25:

“Delay, laches and acquiescence

20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create nonconsideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.”

34. She submitted that, in view of the above judgments and law, the impugned order of the Tribunal deserves to be set aside in the interest of justice. She seeks prayers as made in the petition.

35. Mr. Sanjoy Ghose, learned Senior Counsel appearing for respondent Nos. 25, 53, 83 & 91 stated that the respondents had previously filed an OA 3882/2012 which was pending before the Tribunal seeking parity in pay as is being granted to employees of ARC and SFF. Pending adjudication, in another OA namely ***P.C. Chinhara (supra)***, the Tribunal held that the SOs

and the PSs in the SSB (Secretarial Service) be granted the same pay at par with their counterparts in ARC and SFF. The petitioner No.1 challenged the judgment in the said OA before this Court, which was dismissed vide order dated November 18, 2010.

36. He submitted that the respondents are seeking nothing but the parity in pay with those employees of ARC and SFF, who had previously been working with the respondents and performing the same functions. He also submitted that the Assistants in the ARC and SFF are placed in PB-II with grade pay of ₹4,600/-, whereas the respondents are still stagnating at grade pay of ₹4,200/-, despite the fact that the SOs and the PSs consequent to the judgment passed by this Court in **P.C. Chinhara (supra)**, have already been granted parity with SOs and PSs of ARC and SFF and at ₹4,800/- in PB-II and ₹5,400/- in PB-III vide order dated January 04, 2017.

37. It is the submission of Mr. Ghose that there had always been a parity in pay between the employees of ARC and SFF and at the time of trifurcation in the year 2001, all the Assistants under DGS (Secretarial Services) were in the pay scale of ₹5500-175-9000/- (5th CPC). Today, the respondents cannot be denied the grade pay of ₹4,600/- as being enjoyed by their counterparts. It is also his submission that the promotional posts of the Assistant including SOs and PSs have already been granted parity with SOs and PSs of ARC and SFF.

38. According to Mr. Ghose, upon implementation of 6th CPC recommendation, the pay scale of ₹5500-175-9000/- corresponding to the post of Assistant in different departments of the petitioners was revised as per the mandate of the OM dated August 30, 2008 and accordingly, Assistants in ARC and SFF were also granted the revised grade pay of ₹4,600/- from June 18, 2012 w.e.f., January 01, 2006. Despite the revision of pay having been carried out by the petitioners, the respondents were continued in the grade pay of ₹4,200/- which created a huge disparity between the employees holding the same posts in different units of the same department that is CS, except that, it is under the administrative control of the MHA.

39. Mr. Ghose submitted that the respondents are now integrated into Secretarial Service Cadre of the Intelligence Bureau vide order dated October 12, 2018 and as per the recommendation of the 6th CPC an employee at Intelligence Bureau holding the post of Assistant is getting the grade pay of ₹4,600/- while the respondents who are holding the same post are still stagnating at ₹4,200/- which is a grave injustice, prejudice and

discriminatory policy. He also stated that vide SSC Advertisement Notification-2015 a newly recruited person in Intelligence Bureau as Assistant would get ₹4,600/- while the respondents who are working on the said post for the last 10 to 15 years are getting ₹4,200/-. It is also his submission that the Assistants in both SSB and ARC / SFF continued to work in the pay scale of ₹5500-1759000/- till 2008 when the revision of pay was carried out by the petitioner in two departments including ARC and SFF by granting ₹4,600/- to Assistants whereas no such exercise of revision of pay as per the 6th CPC was done in SSB for the respondents.

40. In support of his submission, he has relied upon the following judgments:-

i. Sukesh Kumar Nayak (supra);

ii. Haryana State Minor Irrigation v. G.S. Uppal & Ors. (Civil Appeal No.9244/2003);

41. He seeks dismissal of the petition.

42. Mr. Sagar Saxena, learned counsel for the other respondents would state that the question regarding the difference in pay scale, promotional opportunities and other service conditions of the persons who had been sent to different divisions i.e. SSB, ARC and SFF was neither raised nor examined or adjudicated by the Supreme Court in the case of **Suresh Kumar Nayak (supra)** and therefore the respondents who at the time of trifurcation were posted in the SSB. The control whereof had been transferred to the Ministry of Home Affairs unlike ARC & SFF.

43. He stated that the petitioners (SSB/MHA) have not implemented the judgment of Supreme Courts in **Suresh Kumar Nayak (supra)**. He also stated that the petitioners have no intention to implement the judgment of the Supreme Court but, on the pretext of said judgment, petitioners are denying the rightful claims of the respondents. He also stated that the question of grant of same pay and allowances including 15% special allowance at par with ARC/SFF secretarial/ministerial service from the date of trifurcation did not arise for consideration in the above case.

44. According to him, the respondents had not prayed for setting aside the trifurcation of the erstwhile DGS (Secretarial Service), in which they had been initially recruited, as the said trifurcation already stood upheld by the Supreme Court in the case of **Suresh Kumar**

Nayak (supra), but the respondents' main plea was that, since their cadre was treated as a dying cadre in which there was no fresh induction and all

base posts were being either surrendered or being filled by personnel of other equivalent combatised cadres and there was discrimination not only qua the UDCs, Stenographers, Assistants, PAs, Section Officers and PSs in SSB vis-a-vis UDCs, Stenographers, Assistants, PAs, Section Officers and PSs in the ARC and SFF but also in terms of grade pay, opportunity of LDCE & Special Allowance etc.

45. According to him, some members of erstwhile DGS (Secretarial Services) are being denied equal pay only on the basis that they are now part of MHA, which is against the principle of natural justice as established by the Supreme Court in **SLP No. CC-1045810459/2013** titled **Municipal Corporation of Delhi & Anr. v. Ram Avtar & others**. He also stated that, some of the respondents had been superseded by their juniors who were serving in ARC/SFF even though they were recruited through the same procedure of recruitment and also the respondents were governed by same DGS Recruitment Rules, 1975 till 2006.
46. He submitted that the respondents should have been given promotion or should have been considered for promotion at least from the date of promotion of their juniors. He stated that the respondents have been discriminated and put into disadvantageous position whereas their counterparts who were in ARC and SFF are continuing to get their Fast Track Promotion including Limited Departmental Competitive Examination ('LDCE', for short) for promotion from the rank of UDC to Assistant and from Assistant to Section Officer (SO). This in turn is resulting in deprivation of fast track career progression. The scope for fast track promotion is being continued in ARC and SFF. He also stated that, before the respondents were transferred to SSB and the following allowances were granted :-
- a) *Hardship allowance.*
 - b) *Ration allowance.*
 - c) *Non-refundable clothing grant.*
 - d) *Cash compensation for work on holidays subject maximum 30 days.*
 - e) *Security allowance to Ministerial and Secretarial and Accounts cadres subject to a maximum of 15% in each grade.*
47. He stated that the Government in 2006 had sanctioned Special Allowances at 15% to each member of ARC and SFF, and that the Special Allowances as admissible to all members of DGS (Secretarial Service) but the same are not being paid to ARC or SFF. Therefore, it is clear that the same allowances which were given to all members of DGS (Secretarial Service) are now

renamed as Special Allowance and paid only to ARC and SFF. Moreover, the prayer of the respondents is for continuation of all allowances which also includes 15% Special Allowance, as they are being discriminated.

48. He submitted that the Tribunal has after considering the judgment of the Supreme Court and the injustice caused to the respondents as well as the fact that the cadre to which the respondents had been allotted was a dying cadre has rightly directed the petitioners to either devise a methodology of choices once again so that employees in the previous system prior to 2001 can be granted choices or by bridging the chasm in between 2001 and today, so that no employees will lose out. He also stated that the Tribunal has rightly directed the petitioner to devise suitable methods or devise a methodology of equalization of opportunities and benefits to the employees so that rigor of the situation can be eased.
49. According to him, similar protection being treated as part of the earlier cadres / service after the transfer was also granted to employees who were transferred from DDA to MCD without taking choices and this Court has upheld the direction given by the Tribunal that all employees transferred from DDA to MCD would continue to get the same benefits as if they have continued in DDA. He has relied on the judgment dated March 1, 2012 passed by this Court in **W.P. (C) No. 2621/2010** and **2671/2010** and the order dated July 3, 2013 passed by the Supreme Court dismissing the SLP filed by MCD against the judgment dated March 1, 2012 of this Court. 50. He seeks dismissal of this Writ Petition.
51. Having heard the learned counsel for the parties, at the outset, we intend to deal with the submission made by Ms. Lakra that the O.A. having been filed by the respondents in the year 2012 for a relief relating that too of the year 2006 shall be barred by limitation. We are not in agreement with the said submission in view of the fact, such a plea has not been taken and there was no occasion with the Tribunal to go into the said plea. In fact, the Tribunal has rendered the judgment on merit. Even otherwise, the grant of pay scale in view of the judgment in the case of **M.R. Gupta v. Union of India and Others, (1995) 5 SCC 628** and **Union of India v. Tarsem Singh, (2008) 8 SCC 648**, the cause of action survives. The plea is rejected.
52. Insofar as the submission of Ms. Lakra on the judgment of the Supreme Court in the case of **Suresh Chand Nayak(Supra)** is concerned, the Supreme Court has put stamp of approval on the trifurcation of the organisation by the letter of the Cabinet Secretariat. The issue with regard to pay parity was not

the subject matter before the Supreme Court. Hence, the Tribunal was competent to decide the said issue.

53. The thrust of the submissions made by the learned counsel for the respondents are primarily with regard to the grant of grade pay of ₹4,600/-. During the course of hearing, Mr. Ghose has stated that, he is not pressing for the claim for 15% special allowance.
54. The pleas of Mr. Ghose and Mr. Saxena primarily are that the post of SOs and PSs working in the same organisation have been granted the grade pay of ₹4,800/- and ₹5,400/- at par with their counterparts in ARC and SFF. Their submission is also, that once the SOs/PSs have got the immediate grade pay of ₹4,800/- from ₹4,600/-, which they were earlier drawing, the respondents being in the grade pay of ₹4,200/- (the post below) are entitled to the next grade pay of ₹4,600/- which is the immediate below grade pay of ₹4,800/-, given to the SOs and PSs.
55. In so far as the submission of Ms. Lakra is concerned, she would submit that the respondents cannot seek any parity qua the incumbents in ARC/SFF as it has been held by the Supreme Court that, all the organisations are different entities bound by separate recruitment rules, more specifically the respondents herein are governed by the Recruitment Rules of 2006, the same shall govern the service conditions of the petitioners.
56. We say that the Tribunal while deciding the OA has only directed in the manner it has done in paragraphs 58 to 60, as reproduced above. In other words, the Tribunal has remanded the matter back to the petitioners to take an informed decision on the benefits that can be granted to the respondents herein. Since the matter has been narrowed down to grant of grade pay of ₹4,600/- we are of the view that the impugned order passed by the Tribunal need no interference. The petitioners must decide the issue as per the directions of the Tribunal.
57. We shall state here that, the decision taken by the petitioners must also keep in mind, the fact that the SOs / PSs have been granted grade pay of ₹4,800/- with a further grade pay of ₹5,400/- after completion of four years and also the fact that the said grade pay of ₹4,800/- is two stages above grade pay of ₹4,200/-, which the petitioners are drawing. In other words, the feeder post of SOs / PSs has been granted the grade pay ₹4,200/- which is not the immediate below grade pay of ₹4,600/-.
58. Accordingly, we dispose of the petition by granting the petitioners three months time to take decision for the reasons stated by the Tribunal and

convey the decision thereof to the respondents, who if aggrieved can seek such remedy as available to them in law.

59. The petition stands disposed of.

CM APPLs. 5955/2020, 44178/2023 & 53675/2023

60. These three applications have been filed by the applicants with the following payers:-

CM APPL. 5955/2020

a) Implead the Applicants as mentioned in Para 1 of the present application as party/respondent in the present case;

CM APPL.44178/2023

a) Implead the Applicants as mentioned in Para 1 of the present application as party/respondent in the present case and Applicants be allowed to file their pleadings;

CM APPL.53675/2023

*It is, therefore, most respectfully prayed that the resent application seeking impleadment of Intelligence Bureau as petitioner may kindly be considered and allowed by impleading Intelligence Bureau as petitioner no. 3 in the
interest of justice*

61. We are not inclined to allow these applications, more so, they were not parties before the Tribunal. The applications are closed. The applicants, if so advised, seek such remedy as available in law.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.