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Central Adminisrative Tribunal
Principal Bench

M.A.No.1090/2002
O.A.No.1371/2002

Hon'ble Shri Govindan S. Tampi, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 13th day of January, 2003

1. Shri J.D.Kapoor
s/o Late Shri H.R.Kapoor
2. Shri B.D.Kaushik
s/o Late Shri Ram Kaushik
3. Shri D.D.Sadana
s/o Shri
4. Shri S.C.Gupta
s/o Late Shri O.P.Gupta
5. Smt. Sohan Devi
w/o Shri Goverdhan Nath

All C/o
Joint Secretary (Training) & C A O,
Ministry of Defence, C-II, Hutmants
New Delhi. .. Applicants
(By Advocate: Sh. Premodh ^{kr} Sharma)

Vs.

1. Union of India through
Secretary
Department of Expenditure
Ministry oof Finance
North Block
New Delhi.
2. Secretary
Ministry of Defence
South Block
New Delhi - 110 011.
3. Joint Secretary (Training) & C A O
Ministry of Defence
C-II, Hutmants
New Delhi.
4. Director
JCB, D Block
Sena Bhawan
New Delhi - 110 011. ... Respondents
(By Advocate: Mrs. P.K.Gupta)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

MA for joining together is allowed.

2. Applicants have assailed respondents' order dated 14.3.2002 where the request for grant of EDP stream and pay scale of Rs.5500-9000 at par with Varitype Operator [hereinafter called as 'VO'] in the Budget Press under the Department of Economic Affairs, has been rejected. They have sought quashment of this order and directions to the respondents to revise the pay scale with all consequential benefits.

3. Applicants are holders of post of Technical Assistant (Varityper) [hereinafter called as 'TA(V)'] in the office of Joint Secretary (Training) & C A O (JCB Department), Ministry of Defence under the pay scale of Rs.1400-2300. The essential qualification for the post of TA (V) is Matriculation with two years experience. The grievance of applicants is that they have been discriminated and have not been allowed EDP pay scale at par with VO in the Budget Press in the Department of Economic Affairs. Regarding duties and responsibilities, it is contended that the duties and functions performing by them are identical to those performed in other Government of India Presses. The OM dated 29.1.2001 whereby the case was forwarded for conversion of Technical Assistant (Varitype Operators) in the Ministry of Finance, Department of Economic Affairs into EDP stream, it has been stated that both categories are mostly similar, the claim of applicants was considered by respondents on the reservation, and was rejected on the ground that this has not been found feasible for grant of pay scale of Rs.5500-9000 to the cadre in JCB as minimum qualification as TA (V) is Matriculation only and the post is not comparable

to that of VO in the Budget Press. The post of TA(V) in JCB was in the lower grade right from the very beginning as compared to VO in Budget Press, giving rise to the present OA.

4. Shri Pramod Kumar Sharma, learned counsel appearing on behalf of applicants, fervently argued his case by contending that applicants have been discriminated arbitrarily in violation of Articles 14, 16 and 39(d) of the Constitution of India. Whereas, Respondent Nos.1 to 4 have already confirmed that duties, responsibilities and qualifications are same with that of Varitype Operator, Government of India's Press as such right from the very beginning the applicants have been treated differently. In this backdrop, it is stated that respondents have denied the payment of salary to applicants as their duties and responsibilities are compared to that of Varitype Operators in Department of Economic Affairs. The action of the respondents, which is a state, is arbitrary and offence the ratio laid down in the following decisions:

1. Y.K.Mehta & Others Vs. Union of India, JT 1988(3) SC 466.

2. Paritosh Kanti Bal v. UOI, 1989(5) SLR 534 CAT(Calcutta).

3. Randhir Singh v. UOI, AIR 1982 SC 879.

5. Respondents' counsel Ms. P.K. Gupta, denied the contentions and stated that applicants have been working as TA(V) in the Joint Cipher Bureau (hereinafter called as 'JCB'), the proposal was examined by the Ministry of Finance and as it has been found that the minimum educational qualification of the Varitype Operators in JCB is Matriculation which

is not comparable to their counter parts in Ministry of Finance and as the aforesaid post in JCB was in the lower grade from the very beginning and these posts are not comparable and the pay scale extended to VT Operators of Ministry of Finance were rightly not extended in the case of the applicants.

6. Ms. P.K.Gupta, further denied that TA(V) in Ministry of Finance and Varitype Operators in Department of Economic Affairs had same pay scale in the printing stream. The Varitype Operators of Budget Press were in the pay scale of Rs.425-700 prior to Fourth Pay Commission, whereas applicants were in the pay scale of Rs.380-560. Subsequently also, applicants have been placed in the lower pay scale the status of JCB which is not similar to that of Government of India's Press. As the TAs(V) do not belong to EDP stream, they are not entitled to Ministry of Finance's OM dated 11.9.1989.

7. However, it is contended that there is no scope for creating higher posts to provide for promotional avenues in keeping with the organisational requirements. After Fifth Central Pay Commission's recommendations, on introduction of ACP Scheme, applicants would be entitled for upgradation of pay.

8. In rejoinder applicants have reiterated their contentions already taken in their OA.

9. At the outset, to establish the case of equal pay for equal work not only functional requirements but also other relevant factors like

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duties, responsibilities, educational qualifications, pay scales and other things are to be comparable and should be identical with the post to which parity is claimed.

10. Moreover, as crystallised by several pronouncements of the Apex Court in the matter of claim pertaining to the equal pay for equal work, doctrine being one of substance must depend upon the nature of work done and its evaluation of duties and responsibilities should be left to expert bodies like Pay Commission. The only scope of interference is when the action of the Government is *mala fide* or discriminatory ^{by} ~~contrary to~~ Articles 14 and 16 of the Constitution of India.

11. Apex Court in Union of India & Anr. v. P.V. Hariharan and Anr., 1997 SCC (L&S) 838 has observed as follows:

"Quite often the Administrative Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

12. If one has regard to the aforesaid ratio and applying the same to the facts and circumstances of the present case, we are of the considered view that mere recommendation by respondents 1, 2 and 4 the case of applicants for grant of EDP pay scales with that of Varitype Operators in Budget Press, Ministry of Finance would not vest upon applicants an indefeasible right before the claim of equal pay for equal work is established. It has to be ascertained whether the post to which comparison is made is equal in all respects or not.

13. From the perusal of reply of Ministry of Finance, where the case of applicants have been duly considered, we find that apart from educational qualifications for the posts held by applicants they have always been in the lower pay scale as compared to the Varitype Operators in Budget Press.

14. The pay scale of Varitype Operators prior to 1.1.1986 was Rs.425-700 whereas the applicants were in the pay scale of Rs.380-560. The pay scale of Rs.1400-2300 has been accorded to Varitype Operators in Budget Press w.e.f. 1.1.1986 whereas the same was accorded to the applicants from 31.1.1989. As these two posts are not comparable and the educational requirements and other factors are not identical, the claim of applicants cannot be countenanced. From the perusal of the reasons recorded by respondents, on examination by Ministry of Finance, which are based on facts, we do not find any infirmity. Moreover, we do not find any discrimination meted out to the

applicants in violation of Articles 14 and 16 of the Constitution of India and the action of respondents is not mala fide.

15. It does not lie within our jurisdiction to go into the parity of pay scale. The prerequisite for equal pay for equal work has not been established by applicants, it is for the expert bodies like, Pay Commission to compare the responsibilities, duties, etc., and once a conscious decision has been taken by Ministry of Finance, after deliberations in detail, the same cannot be found fault with.

16. In the result, OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

(Govindan S. Tampi)
(Govindan S. Tampi)
Member(A)

/rao/