

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, AT CALCUTTA

O.A. No. 350/ 996 of 2017

1. SRIJIB RANJAN SAHA, son of Sripal

Chandra Saha, aged about 47 years,

working as Operation Theatre

Assistance/Dresser-III under K.G.

Hospital/CLW, Chittaranjan,

residing at Street No.27, Quarters

No.32A, P.O. Chittaranjan, District :

Burdwan, Pin-713331, West Bengal.

2. TARAK NATH DAS, son of Late

Manoranjan Das, aged about 51 years,

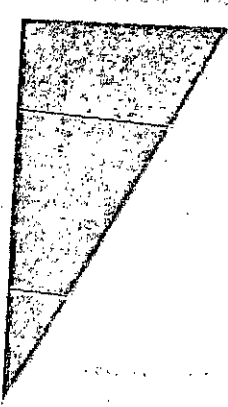
working as Operation Theatre

Assistance/Dresser-I under K.G.

Hospital/CLW, Chittaranjan,

residing at Street No.23, Quarters

a B



No.34A, P.O. Chittaranjan, District :

Burdwan, Pin-713331, West Bengal.

3. PRASANTA KUMAR BISWAS, son

of Gopal Chandra Biswas, aged about

49 years, working as Operation

Theatre Assistance/Dresser-II under

K.G. Hospital/CLW, Chittaranjan,

residing at Street No.14, Quarters

No.25A, P.O. Chittaranjan, District :

Burdwan, Pin-713331, West Bengal.

4. HIRALAL YADAV, son of Late

Baldeo Yadav, aged about 55 years,

working as Operation Theatre

Assistance/Dresser under K.G.

Hospital/CLW, Chittaranjan,

residing at Street No.83, Quarters

No.50B, P.O. Chittaranjan, District :

Burdwan, Pin-713331, West Bengal.

5. AMIT KUMAR SHARMA, son of

Chandra Deo Sharma, aged about 39

years, working as Operation Theatre

Assistance/Dresser-II under K.G.

Hospital/CLW, Chittaranjan,

residing River Road, Quarters No.7A,

P.O. Chittaranjan, District : Burdwan,

Pin-713331, West Bengal.

6. RAVI BHUSHAN PRASAD, son of

Shesh Nath Prasad, aged about 40

years, working as Operation Theatre

Assistance/Dresser-III under K.G.

Hospital/CLW, Chittaranjan,

residing at Street No.17, Quarters

No.12B, P.O. Chittaranjan, District :

Burdwan, Pin-713331, West Bengal.

7. RANJIT KUMAR MONDAL, son of

Late Anil Chandra Mondal, aged

about 46 years, working as Operation

Theatre Assistance/Dresser-II under

K.G. Hospital/CLW, Chittaranjan,

residing at Street No.30, Quarters

No.34D, P.O. Chittaranjan, District :

Burdwan, Pin-713331, West Bengal.

8. SUBHABRATA DAS, son of Karali

Prasad Das, aged about 39 years,

working as Operation Theatre

Assistance/Dresser-II under K.G.

Hospital/CLW, Chittaranjan,

residing at Street No.83, Quarters

No.50A, P.O. Chittaranjan, District :

Burdwan, Pin-713331, West Bengal.

9. RAMGOPAL, son of Late Masi

Charan, aged about 61 years, worked

as Operation Theatre Assistance/

Dresser-I under K.G. Hospital/CLW,

Chittaranjan, residing at Street No.43,

Quarters No.2A, P.O. Chittaranjan,

he

District : Burdwan, Pin-713331, West Bengal.

10. SARVESH SAH, son of P. Sah, aged about 43 years, working as Operation Theatre Assistance/Dresser-II under K.G. Hospital/CLW, Chittaranjan, residing at Street No.10, Quarters No.88, P.O. Chittaranjan, District: Burdwan, Pin-713331, West Bengal.

11. SANKAR CHAKRABORTY, son of Late Narayan Chandra Chakraborty, aged about 50 years, working as Operation Theatre Assistant/Dresser-I under K.G. Hospital/CLW, Chittaranjan, residing at Street No.14A, Quarters No. 5B, P.O. Chittaranjan, District : Burdwan, Pin-713331, West Bengal.

... APPLICANTS

VERSUS

1. UNION OF INDIA

Service through the Secretary,
Ministry of Railways (Railway
Board), Rail Bhawan, 1, Raisina Road,
New Delhi-110001.

2. CHITTARANJAN LOCOMOTIVE WORKS

Service through the General Manager,
Chittaranjan Locomotive Works
(CLW), Chittaranjan, District-
Burdwan, PIN-713331.

3. THE SECRETARY (E), RAILWAY BOARD, Raisina Road, Rafi Marg, New Delhi-110001.

4. THE SECRETARY, Department of PT, North Block, New Delhi-110001.

5. THE CHIEF PERSONNEL OFFICER, Chittaranjan Locomotive Works

(CLW), Chittaranjan, District-

Burdwan, PIN-713331

6. THE SENIOR PERSONNEL

OFFICER (Admn), Chittaranjan

Locomotive Works (CLW),

Chittaranjan, District- Burdwan, PIN-

713331

7. THE DIRECTOR, PAY

COMMISSION- VI, RAILWAY

BOARD, Raisina Road, Rafi Marg,

New Delhi-110001

... RESPONDENT'S

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/996/2017

Date of order : 4.5.2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

SRIJIB RANJAN SAHA & OTHERS
VS.
UNION OF INDIA & OTHERS
(C.L.W.)

For the applicant : Mr. S. Biswas, counsel

For the respondents : Ms. D. Mitra, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicants are holding civil posts in Kasturba Gandhi Hospital Chittaranjan Locomotive Works (KGH/CLW in short), Chittaranjan, West Bengal, as Operation Theatre Assistants (OTA). They are aggrieved as Operation Theatre Assistants in K.G.H./CLW have the opportunity of only 2 promotions and highest Grade Pay in Grade I of Rs.2400, whereas OTAs in other Central Government hospitals or Health Units as AIIMS, JIPMER or PGIMER among others get the highest Grade Pay of Rs.4200/- offered to them and their promotion/career advancement opportunities are far better than the OTAs of KGH/CLW.


2. The applicants would plead that the initial Grade Pay granted by the AIIMS, JIPMER, PGIMER is exactly the same as the highest available grade pay at Grade I for the posts the applicants are holding upon



promotion. That, they preferred an application before this Tribunal in O.A.No.350/2028/2015, praying for parity in grade pay and promotional avenue. It was disposed of by an order dated 23.12.2015 directing the respondents to consider their representation in order to bring parity with the 'Cook' under the respondent No.2. Aggrieved, the applicants moved a writ application, being W.P.C.T.No.72 of 2016 before the Hon'ble High Court at Calcutta wherein the Hon'ble Court had been pleased to pass an Order on 06.04.2016 giving liberty to the applicants to make a fresh representation and further directing that such representation to be considered within 8 weeks from receipt, by the Respondents. Emboldened thereby the applicants preferred representation vide letters dated 09.04.2016 and 12.04.2016. The respondents rejected their representation by their order dated 16.08.2016 which was communicated as reply to information sought by one of the applicants vide Memo No. RTI Cell/2016/399(SC) dated 12.09.2016. Challenging the said order the applicants moved an original application being O.A.350/1821/2016 but the same was withdrawn on 08.06.2016 with liberty to the applicants to file a fresh application within a period of 3 months.



The applicants have averred that they serve as Operation Theatre Assistants in Kasturba Gandhi Hospital at Chittaranjan, District-Burdwan, West Bengal under the Chittaranjan Locomotive Works, the Respondent No.2 herein and generally perform their duties analogous to OTAs of AIIMS etc. at the operation theatres viz. carrying out

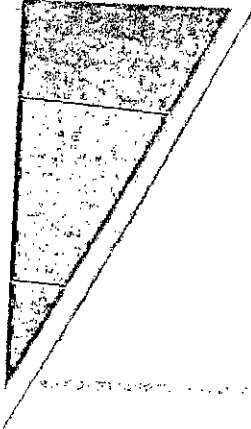


sterilisation, indoor dressing room, outdoor dressing room and also at health units of the Chittaranjan Locomotive Works besides at the Kasturba Gandhi Hospital at Chittaranjan, Burdwan. They are generally responsible for handling trauma, injury and also rendering assistance in surgery, assisting serious bed-ridden patients, performing procedures of dressing and suturing of wounds , plasters, catheterisation, enema, injection, intravenous infusions, assisting Surgeon and Anaesthetists in operation theatres, offering medical relief during accident and emergencies. As OTAs they are also responsible for providing special services, apart from their regular and general duties and responsibilities.



That, as per the Respondent No.2, the responsibilities of the Operation Theatre Assistants include:-

- (i) Rendering assistance to the doctors and nurses in operations of General and Laparoscopic Surgeries, ENT, Eye and Gynaecological & Obstetrics surgeries and attend to sterilization of instruments and dressing materials in an Operation Theatre;
- (ii) Maintaining Linen, Surgical Instruments and other equipments in Operation Theatre, Prepare Bandages and undertake cutting and rolling of bandages, Prepare anti-septic Lotions and also assist the Anaesthetist in administering anaesthetics to the patients;
- (iii) Maintenance of Oxygen system and equipments in wards, emergency room and Operation Theatre;;
- (iv) Securing bleeding from wounds and injuries by various techniques;
- (v) Applying stitches in small wounds;
- (vi) Removing all kinds of stitches, clips, drains;
- (vii) Dressing of different types of injuries and wounds including burn wounds, decubitus ulcers, post-operative wounds;
- (viii) Applying all types of plasters(not needing any type of manipulation), splints, casts and also removal of the same;

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- (ix) Administering inoculate injections in case of emergencies;
 - (x) Performing Catheterization and Removing Catheter;
 - (xi) Sterilizing all instruments of wards;
 - (xii) Performing autoclave all dressing materials;
 - (xiii) Preparing patients for operations;
 - (xiv) Organizing all equipment and instruments in proper order;
 - (xv) Undertaking cutting and rolling of bandages;
 - (xvi) Carrying out any other duties assigned by superiors;
 - (xvii) Carrying out any other work/order given to him by the surgeon/anaesthetist/matron/nurses in charge of Operation Theatre and other superiors.



That the highest permissible Grade Pay and promotional hierarchy available to the applicants herein under the 6th Central Pay Commission, is Operation Theatre Assistants Grade-I having Grade Pay of Rs.2,800/- which on the other hand is the initial Grade Pay offered in the other Central Government Hospitals namely, AIIMS, PGIMER, JIPMER, to the cadre of Operation Theatre Assistants which is totally arbitrary and discriminatory.

That the applicants as the Operation Theatre Assistants and the employees in other Central Government Hospitals stand on the same footing, hold civil posts as per the provisions of law of the land and as such they should be granted the same, if not higher Grade Pay, promotional hierarchy and benefits as against that of their counterparts in the Central Government Hospitals namely AIIMS, JIPMER, PGIMER having the exact conditions and qualifications required for service.

Applicants would further aver that Operation Theatre Assistants in Central Government Hospitals as AIIMS, PGIMER and JIPMER are performing and/or discharging similar nature of duties and functions as that of the applicants and the classification at the entry grade of Operation Theatre Assistant/Dresser Gr.III is Group C pos, further that in order to facilitate their performance in rendering better treatment to the patients and ensuring a better healthcare to the patients at the Railway Hospitals, several In-service training programmes are arranged by the Railway authorities which are in fact vital in enumerating the responsibilities of the applicants in service.



3. To refute their claim for pay parity, the respondents have categorically stated that the entry qualification, nature of duties and responsibilities, functional importance of the hospitals etc. are wholly different. They have averred as under:-

The applicants are seeking relief/higher pay structure drawing parity with operation theatre staff employed in AIIMS, JIPMER and PGIMER which institutes are institutions of National importance as per the provisions of specific Acts enacted by Parliament viz. All India Institute of Medical Sciences Act, 1956, Jawaharlal Institute of Post Graduate Medical Education and Research, Puducherry Act, 2008 and Post Graduate Institute of Medical Education & Research, Chandigarh Act, 1966 respectively. As may be seen from Section 13 of the AIIMS Act, 1956, the Institution has been established with certain broad

objectives which is not the case in respect of other Central Government Hospitals or the Hospital in CLW.

That, the demand of paramedical staff of various Ministries of Government of India were considered by 6th Central Pay Commission vide para 3.8.15 of their report and normal replacement pay structure was recommended for them which was already been granted to them through Railway Services (Revised Pay) Rules, 2008 notified on 4.9.2008. The demand for grant of higher pay structure to Dressers have been again examined by 7th Central Pay Commission vide para 7.6.106 to 7.6.108 of their report. However, the Commission has not made any recommendation. That the cadre strength of OTA/Dresser in the medical department of Railways comprises of the three categories of post which are as under:-



SL No.	Category of posts	Pay Band & Grade Pay	Mode of selection	Eligibility	Sanctioned strength in CLW
1.	OTA/Dresser GRIII.	Rs. 5200/- 20,200 & GP Rs. 1900	Selection (Written Test)	From erstwhile GR-D staff of MED Deptt. with Minimum Qualification of class X/Pass/Matriculate and Class VIII pass for those who has joined before 10.05.1998	05
2.	OTA/Dresser Gr.II	RS. 5200-20,200/- & GP Rs/2400/-	Non-selection	By promotion from OTA/Dresser Gr.III	11
3.	OTA/Dresser Gr.I	Rs. 5200-20,200/- & GP Rs. 2800/-	Non-selection	By promotion from OTA/DSR Grade II	8

That a copy of relevant letters laying down above qualification for OT Assistants of Zonal Railways/CLW is annexed herewith as Annexure R-5. Further that, for promotion from one grade to another they are governed by the provisions of para 214 and 216 of IREM which lays down a residency period of just two years as eligibility for promotion while on the other hand pay structure, method of recruitment/selection, eligibility criteria of OT/Assistants in AIIMS, PGIMER & JIPMER are different. For illustration depicted as under:-



S.No.	Description	AIIMS
1.	Operation Theatre Asstt.	Operation Theatre Assistant
2.	Classification	Group "C"

3.	Pay Band and Grade Pay	PB-I Rs. 5200-20200 GP-Rs. 2800
4.	Method of Recruitment	75% by Direct Recruitment 25% by transfer from the existing Hospital Attendants
5.	Age limit for Direct Recruits	Between 18-30 years (Relaxable up to 40 years for the employees of AIIMS)
6.	Educational and other qualification required for direct recruits	Essential 1. BSC or 10+2 with science with five years experience in the following areas OT ICU CSSD Manifold Room Preference will be given to candidates with Certificate/Diploma course in OT Techniques from recognized Hospitals/institutions 11.6 Work experience shall be considered if the candidate has worked in private or public sector/Hospital of at least 500 beds

That as may be seen, there is an element of direct recruit at the level of Operation Theatre Assistant to the extent of 75% of vacancies and the

qualification is higher as compared to that applicable to OT Assistants of Railways.

That the cases dealt with by AIIMS/JIPMER/PGIMER etc. are often much more complex than those deal in other Central Government Hospitals/Railway Hospitals in general and accordingly functional requirements of such Hospitals are not comparable. Further recruitment qualifications for the post of operation Theatre Assistant in AIIMS/PGIMER/JIPMER etc. are different and much higher than that applicable for OT Assistant/Dresser in Railway Hospitals. That, comparison of the applicants with the Operation Theatre Assistants of AIIMS/JIPMER/PGIMER etc. is misplaced as there are numerous factors which are taken into consideration for fixing pay scales such as –(i) Work programme of the department, (ii) the nature of contribution expected from the employee, (iii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions, (iv) the extent and nature of freedom/limitations available or imposed on him in the discharge of his duties, (v) the extent of powers vested in him (vi) the extent of his dependence on his superiors for the exercise of his powers, (vii) the need to co-ordinate with other departments, (viii) method of recruitment, (ix) level at which recruitment is made (x) the hierarchy of service in a given cadre (xi) avenue of promotion, (xii) the nature of duties and responsibilities (xiii) the horizontal and vertical relativities with similar jobs. Given the technical complexity, the task of recommending appropriate pay structure for different categories of



Government employees is assigned to expert bodies especially mandated for this purpose namely the Central Pay Commissions. Pay Commissions are considered as expert bodies to deliberate upon such issues, taking into account all relevant factors and made their recommendations. That, 7th CPC have gone into the matter related to pay package of various categories of Central Government employees afresh and recommended revised pay structure/matrix for them. The concept of separate grade pay has been done away with and the grade pay at all levels different Ministries/organisations have been examined in chapter 7.6 of their report(Annexure R-8). It is observed from para 7.6.106 of the report that there exist posts of Dresser even in Grade Pay of Rs.1800/- under various Central Government departments. The Commission have not agreed with demand for upgradation of Dressers from Grade Pay Rs.1800 to Rs.2400/-. That as per 7th CPC para 7.6.106 Dressers have demanded a raise to GP Rs.2400/- from GP Rs.1800/-. The Commission has observed in para 7.6.107 that entry level qualification for Dressers is middle standard with First Aid qualification and three years' experience of dressing of wounds. Further in para 7.6.108 the 7th CPC has observed that the Ministry of Health and Family Welfare has recommended grant of higher pay to Dressers with the suggestion that entry level qualification be raised. The commission observed that the entry level qualification of Dressers should be Class XII with three years experience of dressing of wounds. Subject to that revision, the Commission recommended higher GP Rs.2000/- for



Dressers. Further that the existing incumbents not possessing the revised qualification may be granted replacement pay level for the time being. They may be granted the pay level corresponding to Rs.2000/- after acquiring the revised qualification or on completion of five years in the pay level corresponding to GP Rs.1800/- whichever is earlier. That in respect of Grade Pay Rs.4200/- the respondents would aver that as recommended by the 6th CPC, Grade Pay of Rs.2800/- has been granted to OTA and Dressers of KGH at CLW/Chittaranjan and that the Grade Pay of Rs.1900/-, Rs.2400/- and Rs.2800/- have been granted to the OTA and Dressers on the recommendation of the pay commission as implemented in All Indian Railways. As such, they have denied any injustice to the applicants.



4. The respondents have cited the following decisions:-

- (i) **S.C. Chandra & Others vs. State of Jharkhand & Others [JT 2007(10)4 SC 272]** that unless there is a complete and wholesale identity between the two groups there lies no case for pay parity;
- (ii) **Union of India vs. Tarit Ranjan Das[(2003) 11 SCC-658]** that the burden of proof lies on the employee who claims parity;
- (iii) **Union of India vs. Pradip Kumar Dev [2000(8) SCC 580]** that it is not open for any court to sit in judgment as on appeal over the conclusion of the Commission. Further the Tribunal and the High Court proceeded as if it was the employer who was to show that there was no equality in the work. On the contrary the

person who asserts that there is equality has to prove it. The equality is not based on designation or the nature of work alone. There are several other factors like responsibilities, reliabilities, experience, confidentiality involved, functional need and requirements commensurate with the position in the hierarchy, the qualification required which are equally relevant. The same view has been taken by the Hon'ble Supreme Court in the case of **State of Haryana & Others vs. Charanjit Singh & Others [(2006) 9 SCC 321]**;

(iv) **Orissa University of Agriculture & Technology vs. Manoj K. Mohanty [(2003) 5 SCC 188]** where Hon'ble Apex Court set aside the order of the High Court granting equal pay for equal justice.....it was held that in the absence of necessary averments and materials placed on record, there is no scope to give such a direction. It was held that the burden of prove that everything was equal is on the person claiming equal pay for equal work and in the absence of necessary averments and proofs a party would not be entitled to get such directions;

(v) **State of Orissa vs. Balaram Sahu & Others [(2003) 1 SCC 250]** that the applicability of the principle depends not only on the nature of volume of the work but also on the qualitative difference in reliability and responsibilities also and that it is for the claimant of parity to substantiate a clear cut basis of equivalence and a resultant hostile discrimination. Further that



in absence of requisite substantiating material the Court would be wrong to grant parity in pay merely on the presumption of equality of nature of work;

(vi) **State of UP and Others vs. J.P. Chaurasia and Others [1989(1) SCC 121]** wherein it has been ruled by the Hon'ble

Supreme Court that *"The equation of posts or equation of pay must be determined by expert bodies like pay commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a commission or committee, the court should be normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."*



(vii) **State of Haryana and another vs. Haryana Civil Secretariat Personnel Staff Association [(2002) 6 SCC 72]; Union of India and Others vs. Pradip Kumar Dey [(2000) 8 SCC 58]; Indian Drugs and Pharmaceuticals Ltd. vs. Workman, Indian Drugs and Pharmaceuticals Ltd. [(2007) 1 SCC 408]; Secretary, Finance Department & Others vs. West Bengal Registration Service Association & Others [JT 1992 (2) SC 27 : 1993 Supp 1 SCC 153]** to contend that the equation of posts or equation of pay must be determined by the expert bodies like Pay Commission. They are the best judge to evaluate the nature of duties and responsibilities of posts.

5. The respondents would further aver that acceptance of demand made by the applicants will have grave consequence and a cascading

effect on established vertical and horizontal relativities on the Railways and implementation thereof will very badly disturb all existing relativities leading to severe financial, administrative and functional ramifications and industrial unrest among other categories. There are numerous categories on the Railways which have historically been in identical/comparable or even superior pay scale as compared to OT Assistants/Dressers. Acceptance of claim of the applicants will trigger demands for upgradation of pay scale (Pay Band/Grade Pay) from such categories.

6. Heard Id. counsel for both sides and perused the records.

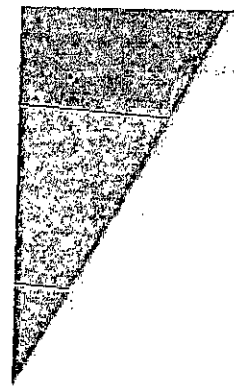
7. To discern the legal proposition in regard to role of courts to determine "equation of posts" or "pay" we noted the following :-

Hon'ble Supreme Court in **Prabhat Kiran Maithani and Others vs. Union of India & Another** [1977 Supreme Court Cases (L&S) 279] held that:-

"3. The learned Solicitor General has invited our attention to the case of Union of India v. G.R. Prabhavalkar [(1973) 3 SCR 714; (1973)4 SCC 183; 1973 SCC(L&S)374] where this Court held that "equation of posts is not a duty which the High Court was competent to carry out in proceedings under Article 226. We do not think that we have wider powers or that we can do with greater facility what a High Court cannot when exercising its writ issuing jurisdiction."

In **State of U.P. and Others vs. J.P. Chaurasia and Others** [(1989)1 Supreme Court Cases 121] it was succinctly propounded by Hon'ble Apex Court in the matter of :-

"Parity in employment" that, "Factors justifying differentiation—Depends on evaluation of duties and responsibilities—Besides quantity,



quality also material—Courts not suited to evaluate and compare on the basis of affidavits and pleadings—Matter should be left to the executive who should appoint an expert body for the purpose—Courts should respect such determination unless mala fides shown."

It was held :

The answer to the question whether Bench Secretaries in the High Court of Allahabad are entitled to pay scale admissible to Section Officers, depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.



Further that, **"Two scales of pay in the same cadre based on merit and experience permissible—Grades I and II created in the cadre of Bench Secretaries in Allahabad High Court and selection to Grade I bearing higher pay made to depend on merit-cum-seniority-- Held, principle of equal pay for equal work not violated – Allahabad High Court Officers, and staff (Conditions of Service and Conduct) Rules, 1975—Constitution of India, Article 14 and 39(d)—Equal work equal pay"**

and on "Right to equal pay for equal work—Nature and scope of – Constitution of India, Articles 14 and 39(d)

Hon'ble Court held :

"Equal pay for equal work for both men and women" has been accepted as a "constitutional goal" capable of being achieved through constitutional remedies. Article 39(d) which proclaims "equal pay for equal work" and other like provisions in the Directive Principles are "conscience of our Constitution". They are rooted in social justice. In matters of employment the government of a socialist State must protect the weaker sections. It must be ensured that there is no exploitation of poor and ignorant. It is the duty of the State to see that the under-privileged or weaker sections get their due. Even if they have voluntarily accepted the employment on unequal terms, the State should not deny their basic rights of equal treatment. It is against this background that the principle of "equal pay for equal work" has to be construed in the first place. Secondly, this principle has no mechanical application in every case of similar work. It has to be read into Article 14 which permits reasonable classification based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. Apart from that, higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common in career service. There may be selection grade, senior time-

scale or super time-scale bearing higher pay scales based on seniority-cum-merit or merit-cum-seniority. The differentiation so made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification having a rational nexus with the object thereof."

In S.C. Chandra and Others vs. State of Jharkhand and Others

[(2007)8 Supreme Court Cases 279] it was held as under:-

"Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. and it has a cascading effect.

Two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment etc. are different. Thus, in State of Haryana v. Tilak Raj it was held that the principle can only apply if there is complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity e.g. a daily-rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. It is well settled by the Supreme Court that only because nature of work is same, irrespective of educational qualification, mode of appointment, experience & other relevant factors, the principle of equal pay for equal work cannot apply."



The Hon'ble Supreme Court in State of H.P. & Another vs. Tilak Raj

[2015 Vol.1 AISLJ] opined that *"It is settled law that the work of fixing pay scale is left to an expert body like Pay Commission or other similar body, as held by this Court in several cases, including the case of SC Chandra v. State of Jharkhand, (2007)8 SCC 279."*

8. In the aforesaid backdrop, in view of the trite, axiomatic and settled law that equation of pay or posts is not the job of a court, we direct the respondents to undertake the following exercise:-

- (i) To prepare an appropriate report on their duty roster, entry qualification, job evaluation, evaluation of their duties and difference in reliability and functional importance vis-à-vis the staff of AIIMS, JIPMER,

PGIMER and with all inputs as are required, refer it to an Expert Committee, to be constituted in accordance with law, which Committee shall consider the grievance of hostile discrimination meted out to them and their claim for parity in pay and scale on par with the identical staff of AIIMS, JIPMER, PGIMER, within 3 months;

(ii) The said Expert Body so constituted shall consider the claim in the light of the inputs and pass an appropriate order or a reasoned and speaking order on the claim within 2 months thereafter;

(iii) An appropriate order shall thereafter be issued by the competent authority within one month thereafter.



No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

sb