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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 2719/2001  
MA No. 465/2003

New Delhi, this the 21<sup>st</sup> day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri S.A. Singh, Member(A)

1. Bhola Dutt Sharma  
S/o Shri Khushal Mani,  
R/o J-1/120, Kartar Nagar,  
Shahdara, Delhi-53
2. Shri Gurbax Singh,  
S/o Shri Kehar Singh,  
R/o 5/202, Subhash Nagar,  
New Delhi-27
3. Shri Surjeet Singh,  
S/o Shri Bishan Singh,  
R/o 17-D, Evershine Apartments,  
Vikas Puri, New Delhi-18
4. Shri Brij Mohan Sharma  
S/o Shri R.P. Sharma,  
R/o A-2/52, Sector-9,  
Plot No.12, Varuna Apartments,  
Rohini, Delhi-85
5. Shri Krishan Lal,  
S/o Shri Amar Nath,  
R/o V-89/A, Khazoor Wali Gali,  
Arvind Mohalla, Gonda,  
Delhi-53
6. Shri Inder Prakash,  
S/o Shri Nathu Ram,  
R/o Block R-10/G, Dilshad Garden,  
Delhi-95
7. Shri J.S. Vedi,  
S/o Shri T.S. Vedi,  
R/o S-3, Greater Kailash Part-II,  
New Delhi
8. Shri Babu Lal Sharma  
S/o Shri M.L. Sharma,  
R/o 1518-A, Gali No.6,  
Rajgarh, Delhi-51
9. Shri Harish Chander  
S/o Shri Maku Ram,  
R/o G-7, Jagat Puri,  
Delhi-81
10. Subhash Chander  
S/o Shri Kanwal Singh  
R/o H.No.47, Village & PO  
Singhu, Delhi-40

11. Bijender Singh Negi,  
S/o Shri Mohan Singh,  
R/o RZ-288/M, Raj Nagar, Part-II  
Palam Colony, New Delhi-45

12. Kamal Kumar Singh,  
S/o Shri Vijay Pal Singh,  
R/o G-117, S-2, Dilshad Colony,  
Delhi-95

13. Dinesh Kumar,  
S/o late Shri Raghbir Singh,  
R/o H.No. 329, Alipur,  
Delhi-36

14. Shri L.C. Malik,  
S/o Shri Vijay Singh,  
R/o H.No.217, Katwaria Sarai,  
New Delhi

(Shri G.D. Gupta, Sr. Advocate with Shri S.K. Gupta,  
Advocate)

versus

1. Union of India,  
Through Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.
2. Secretary,  
Ministry of Finance,  
Department of Expenditure,  
North Block, New Delhi.
3. Joint Secretary (U.T.),  
Ministry of Home Affairs,  
North Block, New Delhi.
4. Govt. of NCT of Delhi,  
Through Chief Secretary,  
Delhi Secretariat,  
IP Estate, IG Stadium,  
New Delhi
5. Principal Secretary (Home)  
Govt. of NCT of Delhi,  
Delhi Secretariat,  
IP Estate, IG Stadium,  
New Delhi
6. Chief Fire Officer,  
Delhi Fire Service,  
Fire Headquarter,  
Connaught Lane, New Delhi

(Shri R.N. Singh, Advocate for respondents 1-3  
Shri Ram Kawar, Advocate for respondents 4-6)

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ORDER

Justice V.S. Aggarwal

The applicants are working in the Wireless Section in the Communication Wing of Delhi Fire Service in various capacities like Assistant Wireless Officer, Radio Technician, Workshop Assistant, Radio Operator, Store Keeper (Wireless) etc. By virtue of the present application, they seek a direction to place them in the pay scale equivalent to the category of Wireless Section in Delhi Police on the same analogy on which higher pay scale was granted to the other employees of Delhi Fire Service by the Ministry of Home Affairs.

2. The relevant facts alleged are that previously the administrative control of Delhi Fire Service was under the Deputy Commissioner (Water), Municipal Corporation of Delhi and because of some administrative reasons the administrative control of Delhi Fire Service was shifted to Government of National Capital Territory of Delhi with effect from 10.11.1994. In 1987, the Municipal Corporation of Delhi had adopted a resolution to enforce recommendations of the Fourth Central Pay Commission. Accordingly, the pay scales were revised. The other employees of the Municipal Corporation of Delhi were given the benefit according to the recommendations of the Fourth Central Pay Commission. However, the controversy arose regarding employees of Delhi Fire Service belonging to various categories. As a matter of fact, it is alleged that the nature of duties and

*V.S. Aggarwal*

functions performed by the employees of Delhi Fire Service were considered to be of more hazardous and arduous nature. The Commissioner of Municipal Corporation of Delhi in May 1988 had put up a resolution before the Corporation and the Corporation had approved the implementation of the Fourth Central Pay Commission recommendations as accepted by the Government of India. A sub-committee was constituted to examine the proposal and make recommendations. So far as Delhi Fire Service is concerned, the sub-committee observed that it is an important wing of Municipal Service. It is a disciplined force like the Delhi Police and is required to perform more hazardous and arduous nature of duties at all odd hours. It was suggested that their pay scale should be brought at par with comparable services like Delhi Police. The matter was discussed and it was decided to seek the approval of the Ministry of Home Affairs for grant of one stage higher scale of the operational staff of Delhi Fire Service. The matter was referred to the Government of India. It conveyed the approval of the Government to the proposal to give higher pay scale to the personnel and officers of Delhi Fire Service. Accordingly, the categories of Fireman, Leading Fireman, Driver, Sub Officers, Station Officers, Assistant Divisional Officer, Divisional Officers, Deputy Chief Fire Officer and Chief Fire Officer were given the scale at one stage higher as approved by the Government of India.

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3. It is pleaded that although the pay scales of other categories were revised to one stage higher, according to the recommendations of the Fourth Central Pay Commission and brought at par with the scales prevalent in Delhi Police, the categories to which the applicants belong were left out for the reasons best known to the respondents. It is contended that the applicants are a part and parcel of Delhi Fire Service and are the members of a disciplined force. There is no ground to deny similar benefits to the applicants who belong to the aforesaid category. A plea has been raised that the note which was submitted by the Home Department of the Government of National Capital Territory of Delhi is self explanatory and makes it clear that the Wireless Section of Delhi Fire Service is a left out category inadvertently, but the claim of the applicants was still rejected. According to the applicants, there is no ground to deny the pay scale as had been given to the other staff of Delhi Fire Service and thus alleging discrimination, the present application has been filed.

4. In the reply filed by respondents 1 to 3, the application has been contested. It has been pointed that the applicants had earlier filed TA No.5/1996. The said application was disposed of by this Tribunal with a direction to consider the demand of the applicants, taking into account the nature of duties and responsibilities and all other relevant material on the record. In pursuance of the directions of this Tribunal,

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the representation had been considered, but the proposal for grant of higher pay scale to the Wireless Staff in Delhi Fire Service was not agreed to because there was no equation of various categories of posts in the Wireless Section of Delhi Fire Service with any other post in the Delhi Fire Service. In the matter of scales of pay of the staff in the Communication Unit of Delhi Police, every employee of the Police department is a Police officer. This is not the situation in the Delhi Fire Service. The mode of recruitment, requisite qualifications, hierarchy and charter of duties and responsibilities of the posts in the Wireless Section of Delhi Fire Service are not identical to the ranks in the Communication Unit of Delhi Police and lastly that the applicants had not submitted any memorandum before the Fifth Central Pay Commission. There was no recommendation for upgradation of scales of pay of these categories. It was alleged that grant of higher pay scales to the operational staff working in Delhi Fire Service was based on the recommendations of the Sub Committee constituted by the Standing Committee of the Municipal Corporation of Delhi. It was found that the criteria adopted is that it should be a disciplined force like Delhi Police and they should perform more hazardous and arduous nature of duties and they should perform duties in odd hours. The operational staff of Delhi Fire Service perform the most hazardous and arduous nature of duties as they risk their lives while fire fighting and they can also be called for duty at odd hours. In the case of the applicants it was not so.

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5. Furthermore, it has been pleaded that fixation of pay scales is primarily and exclusively a function which has to be left to be decided by the executive. Thus, this Tribunal should not interfere in such matters. It is denied that there is any discrimination practised against the applicants.

6. Respondents 4 to 6 have filed their separate reply. They also contended that the representation of the applicants was considered by the Home Department of the Government of National Capital Territory of Delhi who is the cadre controlling authority. The matter was referred to the Government of India, Ministry of Home Affairs, Pay Anomaly Section. It had been considered in consultation with the Ministry of Finance and pleas of the applicants had not been sustained. The grant of higher pay scale to the operational staff was based on the recommendations of the Sub Committee. The same were not found applicable in case of the applicants.

7. We have heard the parties' learned counsel. The question that comes up for immediate consideration is as to whether this Tribunal is entitled to interfere in matters of fixation of pay scales and if so whether the claim of the applicants is justified in terms whereby they contend that they had been discriminated.

8. The decision rendered in the case of Randhir Singh v. Union of India and others, AIR 1982 S.C. 2879

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was one of the earliest decisions pertaining to 'equal pay for equal work' and under what circumstances there can be interference in this regard. Shri Randhir Singh was a Constable Driver in Delhi Police Force. He had demanded that his scale of pay should be the same as the scale of pay of other drivers in the service of the Delhi Administration because he discharged almost similar if not more onerous nature of duties. The Supreme Court held that the principle of 'equal pay for equal work' is not a mere demagogic slogan. It was conceded that the matter of fixation of pay is primarily for the executive Government and expert bodies like the Pay Commission to consider. The Supreme Court held:-

"xxxx xxxx xxxx We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same."

Thereupon while discussing Article 39(d) read with Article 14 of the Constitution, the Supreme Court further held:-

"It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right.

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But it certainly is a Constitutional goal. Art. 39 (d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Art. 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

On the facts, the writ petition had been allowed with a direction to the respondents to fix the scale of pay of the petitioner and the drivers-constables of the Delhi Police Force at par with the drivers of the Railway Protection Force. In the case of Y.K. Mehta and others v. Union of India and another, AIR 1988 S.C. 1970, the Staff Artistes of Doordarshan were claiming the same principle to be enforced. They were said to be Government servants like the Staff Artistes of All India Radio. Initially they were appointed on contract basis and subsequently the Staff Artistes were appointed on a time scale like a Government servant. They contended that they were being discriminated. The Supreme Court taking stock of the facts of that particular case allowed the writ petition and held:-

"We have gone through the averments in the writ petitions and those made in the counter-affidavits filed by the Director General of Doordarshan and we have no

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hesitation in holding that the petitioners perform the same duties as those performed by their counterparts in the Film Division. When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two in the matter of pay. One of the directive principles of State Policy, as embodied in clause (d) of Article 39 of the Constitution, is equal pay for equal work for both men and women. The provision of Art. 39(d) has been relied upon by the petitioners. The Directive Principles contained in Part-IV of the Constitution, though not enforceable by any Court, are intended to be implemented by the State of its own accord so as to promote the welfare of the people. Indeed, Article 37 provides, inter alia, that it shall be the duty of the State to apply these principles in making laws. Even leaving out of our consideration Art. 39(d), the principle of "equal pay for equal work", if not given effect to in the case of one set of Government servants holding same or similar posts, possessing same qualifications and doing the same kind of work, as another set of Government servants, it would be discriminatory and violative of Arts. 14 and 16 of the Constitution. Such discrimination has been made in respect of the petitioners, who are the Staff Artistes of Doordarshan, by not giving them the same scales of pay as provided to their counterparts in the Film Division under the same Ministry of Information & Broadcasting. The petitioners are, therefore, entitled to the same scales of pay as their counterparts in the Film Division."

Similar principle was again the subject matter of controversy in the case of State of U.P. and others v. J.P. Chaurasia and others, (1989) 1 SCC 121. Prior to 1965, in the High Court of Allahabad, Bench Secretaries were on a higher pay scale than that of Section Officers. In 1965, the State Government had appointed a Pay Rationalisation Committee with wide-ranging reference. The committee was asked to consider the duties and

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responsibilities of different categories of posts. The committee recommended for them a pay scale slightly lower than that of Section Officers. The said recommendations were accepted. The Bench Secretaries had filed a petition. They demanded that they should be put at par with Section Officers if not on higher scale. The Allahabad High Court had allowed the petition. The Supreme Court held that ordinarily in such like matters, the court should not tinker with equivalence unless it is shown that it was made with extraneous consideration. The findings were:-

"The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question 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."

The decision of the Allahabad High Court in face of the aforesaid was set aside. Identical was the question

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before the Apex Court in the case of Umesh Chandra Gupta and others v. Oil and Natural Gas Commission, AIR 1989 SC 29. The Supreme Court had rejected the claim of the employees seeking equivalence of pay scale holding that the nature of work and responsibilities of the posts are primarily matters to be evaluated by the management and not for the court to determine by relying upon the averments in the affidavits of interested parties.

9. Yet in another decision in the case of Union of India and others v. Makhan Chandra Roy, AIR 1997 S.C. 2391, Shri Makhan Chandra Roy was working as a Laboratory Assistant under Dandakaranya Development Authority. He had claimed the pay scale which was not granted to him. This Tribunal after hearing the contesting parties took the view that Shri Makhan Chandra Roy was not entitled to any higher pay scale only on the ground of equal pay for equal work. The Supreme Court held that it was a policy decision which was within the domain of the appointing authority. The decision of this Tribunal was set aside. The case of J.P. Chaurasia (supra) was again referred holding:

"xxx xxx xxx The Tribunal having come to the conclusion that on merits the respondent had no case on the ground of equal pay for equal work, the O.A. ought to have been dismissed. Our attention was also drawn by the learned Senior Counsel for the appellant to a decision of this Court reported in (1989) 1 SCC 121 : (AIR 1989 SC 19) (State of U.P. v. J.P. Chaurasia). In that judgment the following observations are made (at p.25 of AIR):-

"The first question regarding

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entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question 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."

A similar reference can also be made to the decision of the Supreme Court in the case of Shri Alvare Noronha Ferriera and Another v. Union of India and Others, JT 1999 (3) SC 223. In the said case, the District and Sessions Judges in Goa were claiming parity in pay scales with District and Sessions Judges of Delhi. The Supreme Court held that the parameters for invoking the said principles would include nature of the work and if they are under a common employer. The petition had been allowed holding that there was no ground to make a difference in the pay scales.

10. Another case on which reliance has strongly been



placed by the respondents is the decision in the case of Union of India & Anr. v. P.V. Hariharan & Anr., 1997(2) AISLJ 127. The Supreme Court came heavily on the decisions pronounced by this Tribunal holding that it is not for this Tribunal to fix the pay scales. The findings reached were:-

"Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by the Administrative Tribunals on the question of pay scales. We have noticed that quite often the 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 categorise 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. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

11. More recently, the Supreme Court in the case of State of Haryana and Another v. Haryana Civil Secretariat Personal Staff Association, 2002 SCC (L&S)

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822 was also concerned with the same controversy. The Supreme Court held that it is for the State or the expert body to consider the question of parity of pay scales. Ordinarily the courts should not try to delve deep into the administrative decisions. The Supreme Court directed that restraint should be exercised and interference is called where the decision is patently irrational, unjust and prejudicial to a section of employees. Even when the courts interfere, a direction should be given to reconsider the matter and pass a proper order rather than grant a particular scale. In paragraph 10, the Supreme Court held:-

"10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of the complex nature of issues involved the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach

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such matters with restrain and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration grating a particular scale of pay and compelling the Government to implement the same. As noted earlier, in the present case, the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre."

From the aforesaid, the conclusions which we can conveniently draw for the purpose of disposal of the present application are:-

(i) that it is for the expert bodies like the Pay Commission, Anomaly Committee or the executive to <sup>go</sup> <sub>go</sub> into the question of fixation of pay scales; and

(ii) the courts and Tribunals should shy away from such an exercise, but if there is hostile discrimination or the order suffers from non-application of mind or otherwise similar facts exist, this Tribunal would certainly enforce the principle of 'equal pay for equal

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work based on Article 39(d) read with Article 14 of the Constitution.

12. It is in this back-drop that the facts of the present case can be looked into.

13. The claim of the applicants had been rejected on the ground that there was no equation of posts. The employees of the Delhi Police are working under the Delhi Police Act. The requisite qualifications and charter of duties are different and there is no specific recommendation by the Pay Commission.

14. We find ourselves in agreement with the learned counsel for the applicants when he states and contends that before sending the proposal to the Ministry of Home Affairs and Ministry of Finance, the duties and responsibilities had been compared and it was found that they perform the same duties as their counterparts in Delhi Police holding similar posts. The nomenclature of the posts is not material, but it is always the sum and substance of the duties performed which carries weight. It is true that the officers of the Delhi Police perform their duties under the Delhi Police Act and for recruitment, the requisite qualifications etc. which we shall refer hereinafter are by and large the same. The applicants by virtue of Misc. Application No. 465/2003 had placed on the record, a comparative statement showing pay

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scales, qualifications etc. of the persons working in Delhi Fire Service in the said department and Delhi Police. The chart also indicates the comparative statement showing the duties and responsibilities of different officers. It is unnecessary for us to reproduce the whole of the same, but perusal of the same reveals that by and large, the qualifications and method of recruitment besides the duties are identical. As a representative matter, we take up the post of Assistant Wireless Officer. The qualification in the Delhi Fire Service is Diploma in Telecommunication Engineering or equivalent from a recognised University/Institution. In Delhi Police, it is Diploma in Radio Technology/Electronics /Telecommunication issued by a recognised institute. Their duties and responsibilities are also by and large identical. In Delhi Police, he is of the rank of Inspector and is responsible for smooth functioning of District Workshop. He is responsible for the control and supervision of Operational Staff. The duties of the Assistant Wireless Officer (Maintenance/Store/Operational) are almost identical as indicated. There is nothing on the record to indicate that what has been told to us in fact is not correct.

15. Another important factor that cannot be ignored is about the reference that was made. Most of the officers in Delhi Fire Service had not been given one scale higher which was their demand and they were claiming for corresponding parity with other services

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particularly with Delhi Police. The matter was referred to the Government of India. It conveyed the approval of the Government to give higher scale to officers/personnel of Delhi Fire Service. It was given in the case of Fireman, Leading Fireman, Driver, Sub Officers, Station Officers, Assistant Divisional Officer, Divisional Officers, Deputy Chief Fire Officer and Chief Fire Officer etc. However, so far as the applicants are concerned, it was denied. It appears to us that there is hostile discrimination vis-a-vis the applicants in this regard. The applicants are also in Delhi Fire Service. The duties of the Wireless Officer are also as important as any other post in the same service. It is patent from the record that a reference was made for giving higher scale to other persons in Delhi Fire Service and the claim of the applicants was inadvertently missed. It is patent from Annexure A-7 letter written by the Deputy Secretary (Home-III), Government of National Capital Territory of Delhi to the Joint Secretary (UT), Pay Anomaly Section, Ministry of Home Affairs. We reproduce the relevant portion of the said order:-

"At the time of 3rd Pay Commission, the pay scales of wireless staff members of Delhi Fire Service were at par with Delhi Police. At the time of the 4th Pay Commission, the staff members of wireless wing of Delhi Police got enhanced pay scales than those recommended by 4th Pay Commission vide letter No. 14011/12/87-UTP dated 23.12.88 issued by the Director (SP), Govt. of India, Ministry of Home Affairs. On the same plea, the M.C.D. gave one step higher pay scales than those recommended by 4th Pay Commission to all the operational subordinate staff members and

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✓ officers from the rank of Fireman to Chief Fire Officer including the Wireless Officer but the staff working in Wireless section of Delhi Fire Service was left out inadvertently. These pay scales were made applicable w.e.f. 1.1.86. At the time of 5th Pay Commission, considerable variation has come up in their pay scales. The 5th Pay Commission was not approached because at that time the case in question was pending in the High Court who referred the same to CATS and now finally the CAT has passed orders to get the case examined. In view of what has been stated above and also as desired by the Chief Secretary and CATS, I request you to kindly examine the case and pass appropriate orders at an early date."

Once the Government in charge, namely the National Capital Territory of Delhi admits that there was an inadvertent mistake and the others had been granted the benefit and, therefore, we are of the considered opinion that the applicants have since been discriminated. It was rightly pointed that had their case been sent along with others, they would have got the necessary benefit. Resultantly, it must be held that the claim of the applicants had not been dealt with fairly and that they had been discriminated.

16. In that view of the matter, we allow the present application and pass the following order:-

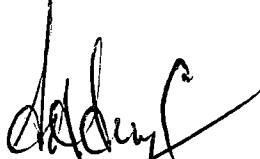
(a) keeping in view the advice of the Supreme Court in the case of Haryana Civil Secretariat Personal Staff Association (supra), we direct that the order dated 29.9.2000 whereby the claim of the

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applicants had been rejected is quashed; and

(b) the applicants are entitled to be considered and it is directed that the respondents should re-consider their claim in the light of our findings above.

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No costs.

  
(S.A. Singh)

Member (A)

  
(V.S. Aggarwal)

Chairman

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/sns/