

10

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. NO.2721/2001
M.A. NO.2236/2001**

New Delhi this the 24th day of October, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI M.P.SINGH, MEMBER (A)

1. Shri Surjan Singh
S/o Shri Jhagru Singh
2131/e, Prem Nagar
Gali No.1
New Delhi-8.
2. Shri Rajpal Sharma
S/o Shri Girdhari Lal
F-4/278, Sultanpuri
Delhi-41.
3. Shri Rajpal Singh
S/o Shri Dhara Singh
R/o Vill.Ujva, Delhi-73.
4. Shri Ram Kumar
S/o Shri Ram Chander
R/o 27/379, DMS Colony
Hari Nagar, New Delhi.
5. Shri Ram Kanwar
S/o Shri Chandgiram
R/O 21/286, DMS Colony
Hari Nagar, New Delhi.
6. Shri Nathu Ram
S/o Shri Manaram
R/O near Faridpuri
Rajasthan Kunar
Sector 153, West Patel Nagar
New Delhi.
7. Shri Hazari Lal
S/o Shri Fatehram & P.O.
R/o Vill.Puthla
(Haryana).
8. Shri Jawala Dutt
S/o Shri Jaidrath
WZ 42, Khampur
West Patel Nagar
New Delhi-8.
9. Shri Mahavir Singh
S/o Shri Keliram
R/o RZA 152, Nand Ram Park
Uttam Nagar, New Delhi.

- 2 -

10. Shri Nihal Singh
S/O Shri Ram Swarup
30/424, DMS Colony
Hari Nagar, New Delhi.
11. Shri Jagdish Prasad
S/o Shri Khem Chand
R/O A/105, Maharani Enclave
Hastal, Vill.Uttam Nagar
New Delhi-59.
12. Shri Rohtas Meena
S/O Shri Ram Chander Meena
Plot No.3, Ambedkar Colony
Bijwasan, Delhi-61.
13. Shri Bhim Singh
S/o Shri Channa
R/o B4/112, Sultan Puri
Delhi-41.
14. Shri Kanhya Lal
S/o Shri Kali Ram
32/448, DMS Colony
Hari Nagar
New Delhi-64. ... Applicants

(Ms. Manju Aggarwal, proxy for Shri S.M. Garg, Counsel for the applicants.)

-versus-

1. Union of India
Through its Secretary,
Ministry of Agriculture
(Dept.t of Animal Husbandry and Dairying)
Krishi Bhawan, New Delhi.
2. General Manager
Delhi Milk Scheme
West Patel Nagar
New Delhi. ... Respondents

(By Shri R.N.Singh, Advocate)

O R D E R

JUSTICE V.S.AGGARWAL:-

MA No. 2236/2001.

MA No. 2236/2001 for joining together in Original Application No. 2721/2001 is allowed.

MS Ag

OA No. 2721/2001

The applicants by virtue of the present application seek a direction to the respondents to grant them the pay scale of Rs.4000-6000 with effect from 1.1.1996.

2. Some of the relevant facts are that the Fifth Central Pay Commission had given the pay scale of Rs.4000-6000 to all Skilled Operatives/Sukhani Supervisors/Compositors Gr.I/Senior Machine Assistants etc. in other departments of the Government of India corresponding to the pay scale of Rs.950-1400/1500. The Skilled Operatives of Delhi Milk Scheme were in the scale of Rs.950-1500 as per the recommendations of the Fourth Central Pay Commission. After the recommendations of the Fifth Central Pay Commission, Skilled Operatives of Delhi Milk Scheme had been placed in the pay scale of Rs.3050-4590/- which is corresponding to lower pay scale of Rs.800/825-1150/1200. It is alleged that all the Semi-Skilled Operatives in other departments whether they were in the pay scale of Rs.775-1150, 800-1150 or 825-1200 had been placed by the Fifth Central Pay Commission in the pay scale of Rs.3050-4590. The Skilled Operatives whether they were in the pay scale of Rs.950-1500 or Rs.950-1400 were not placed in the new scale of Rs.4000-6000. Applicants in this process invoke Article 39 (d) read with Article 14 of the

MS Ag

Constitution to claim parity of pay scale i.e. Rs.4000-6000 given to Skilled Operatives. It is also contended that the Semi Skilled Operatives and Dairy Mates and Semi-skilled fitters had been given the pay scale of Rs.4000-6000 on basis of the Assured Career Progression Scheme while applicants remained in lower scale and though the applicants are senior to those persons, they have been still kept in the lower grades. Hence the present application.

3. In the reply filed, the application has been contested. It has been pleaded that from the start of the Delhi Milk Scheme, the following categories of Class IV staff had been working in the Central Dairy Transport Workshop, Dairy Engineering Section etc.:-

Sl.No.	Name of the Post	Pay Scale
1.	Mate	Rs.70-1-80-EB-2-85 (Revised 2650-4000)
2.	S.S.F.	Rs.75-1-85-EB-2-95 (Revised to Rs.2650-4000)
3.	S.S.O	Rs.75-1-85-EB-2-95 (Revised to Rs.2750-4400)
4.	S.O.	Rs.110-155 (Revised 3050-4590) "

The Mates working in the Central Dairy are promoted to the post of S.S.O. and thereafter to the post of S.O.. The Mates working in the Transport Workshop and Dairy Engineering are promoted to the post of S.S.F. and thereafter to the post of Fitter. The Mates

MSAg

posted in Distribution Wing have no promotional avenue. Only those Mates who were 5th class and having a driving licence were considered for appointment to the post of Driver Misc.Duty. On the recommendations of the Fifth Central Pay Commission, the pay scales have been revised as under:-

Name of the Post.	Pre-revised pay scale	Revised pay scale
Mate	800-1150	2650-4000
S.S.F.	800-1150	2650-4000
S.S.O.	825-1200	2750-4400
S.O.	950-1500	3050-4590
Driver Misc. Duty	1200-2040	3050-4590
Mechanic	1200-2040	4000-6000 "

It is denied, therefore, that the applicants are entitled to claim parity of pay scale. It is further asserted that they cannot claim the principle of 'equal pay for equal work'. It is not disputed that the case of the applicants was recommended to the Government for grant of the scale of Rs.4000-6000 but the same had been rejected.

4. During the course of submissions, the learned counsel for the applicants raised two grounds:-

- (i) similarly placed employees in other departments have been given the scale of Rs.4000-6000 and the applicants, therefore, cannot be discriminated; and
- (ii) on basis of the Assured Career Progression Scheme, the Skilled

Abey

Operatives who were junior to the applicants had been given the scale of Rs.4000-6000. The applicant in the process are being discriminated and Articles 14 and 16 of the Constitution are being violated.

5. Taking up the first argument in the first instance, we deem it necessary to mention that the principle of 'equal pay for equal work' is not a fundamental right but it is a constitutional goal. when Article 14 is read with Article 39(d) of the Constitution, it makes it clear that when persons are discharging similar duties and the same functions, they have not to be discriminated in the payment of salary.

6. However, this question as to what scale has to be given in a particular Ministry or department is ordinarily to be determined by the concerned Ministry keeping in view the nature of the duties and educational qualifications and the most important is the surrounding circumstances. Merely because if similarly placed employees in other departments had been given the same scale will not imply by itself that the same scale should be made available to the applicants. In the present case in hand, we are not impressed by the said argument for the simple reason that it is not shown that the persons allegedly similarly situated discharge the same duties or there is no such difference as such. Consequently in the absence of these important fact, the applicants cannot claim parity of pay scales.

A handwritten signature in black ink, appearing to read 'MS Ag'.

7. As regards the second submission, the applicants have asserted that on 9.8.1999, the Government of India had introduced the Assured Career Progression Scheme. It is not in dispute that this is aimed to overcome the difficulty of certain employees who are stagnating on a particular post. First Financial Upgradation under the said scheme is given after 12 years of regular service and second Financial Upgradation after 24 years of regular service or after 12 years of regular service from the date of the first Financial Upgradation. This is subject to certain restrictions one of them being that there should be no regular promotion during the prescribed period of 12 years and 24 years availed by an employee. Following the said scheme, the respondents granted the benefit of pay scale to the Dairy Mates and Semi Skilled Fitters and they were directly placed in the pay scale of Rs.4000-6000. This fact has not been denied by the respondents in their counter affidavit. In other words, persons who were earlier in the lower scales than the applicants, and obviously junior to them had been placed in the higher scale on the basis of Assured Career Progression Scheme. This anomaly had resulted because the representation of the applicants had been rejected while on the basis of the Assured Career Progression Scheme referred to above, the Semi-Skilled Operatives of Delhi Milk Scheme had been placed in the higher scale of Rs.4000-6000. We have no hesitation in concluding that this amounts to

A handwritten signature in black ink, appearing to read "MS Ag".

-8-

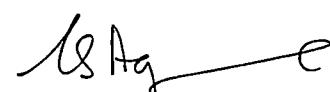
discrimination and unequal treatment to the applicants. This is for the reason that the persons who were Semi-Skilled Fitters and were one grade lower than the applicants, on basis of the said scheme had been placed in the higher scale of pay.

8. As a result of the same, it is necessary to protect the rights of the applicants. They must be given the same scale of pay with effect from the date persons junior to them or those who were in the feeder posts have been given the said scale.

9. For these reasons, we allow the present application and direct that the applicants should be granted the scale of Rs.4000-6000 with effect from the date their juniors or persons in the feeder cadre have been granted the aforesaid scale of Rs.4000-6000. In the circumstances of the case, there will be no order as to costs.


(M.P. SINGH)

MEMBER (A)


(V.S. AGGARWAL)

CHAIRMAN

/sns/