

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1/89

DATE OF DECISION: 21 Feb, 1991

SHRI NAIN SINGH BHAKUNI & ORS. ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

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THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS

SHRI M.K. RAMAMURTHY,
COUNSEL

FOR THE RESPONDENTS

SHRI P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri Nain Singh Bhakuni and 428 others applicants, working as Draftsmen in the Central Water Commission (CWC) have jointly filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the allotment of the revised scales of pay of Rs.1600-2660, Rs.1400-2300 and Rs.1200-2040 corresponding to the Third Pay Commission scales of pay of Rs.550-750, Rs.425-700 and Rs.330-560 respectively w.e.f. 9.11.1987 instead of 1.1.1973 as Draftsmen Grade I, II and III.

2. Briefly, the case of the applicants is that upto 31.12.1972 they have been enjoying parity in the scales of pay with their counter-parts in Central Public Work Department

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(CPWD) etc., on the basis of the recommendation made by the First Pay Commission and Second Pay Commission. This parity was initially maintained on the basis of the recommendation of the Third Pay Commission who had observed:-

"79. We find that fully qualified draftsment, who have to undergo a two-year course after their Matriculation are now being recruited on a scale of Rs.150-240, or in some cases even on the lower scale of Rs.110-220. We feel that the scale of Rs.150-240 is rather low whether from the point of view of the qualifications demanded or of the duties normally performed. Similarly, it seems incongruous that the three-year Diploma holders in Engineering recruited for the drawing office should have a scale of only Rs.205-280, while the lower scale for those recruited to the regular engineering line is Rs.180-380, where the maximum is higher by Rs.100/-. Regarding the complaint about the non-availability of Class II posts we have felt that these posts in the gazetted ranks should not be created merely to improve prospects of promotion. We would, however, recommend that draftsmen who possess a three-year diploma in engineering should be provided with an opening to posts in the scale of Rs.550-750 in revised terms, in the regular engineering line. This should enable them to progress further and achieve gazetted status in that line if they are found suitable.

80. We feel that there is no justification for the existence of as many as thirty different pay scale in the range of pay from Rs.110 to Rs.575, in a category where the levels of the skills required are fairly well established and could be expected to be homogenous among the various departments. We recommend that draftsmen should be assigned the following revised scales and

where the levels of the skills required are fairly well established and could be expected to be homogenous among the various departments. We recommend that draftsmen should be assigned the following revised scales and should satisfy the qualification requirements noted against each for purposes of direct recruitment.

TABLE XVII

Level	Proposed Scale (Rs.)	Qualifications for direct recruitment
I . . .	260-430	Matric plus one year's experience.
II . . .	330-560	Matric plus 2-year diploma in draftsmanship or its equivalent.
III. . .	425-700	Matric plus 3-year diploma in engineering or its equivalent.
IV . . .	550-750	Degree in engineering or its equivalent.
I . . .	700- 900	Degree in engineering or its equivalent with experience.

3. Based on the above recommendation the following scales of pay were assigned to the applicants and their counter-part in the CPWD w.ef. 1.1.1973:-

- i. Grade III Rs.260-430;
- ii. Draftsmen Grade II Rs.330-560;
- iii. Draftsmen Grade I Rs.425-700.

As the highest scale of Rs.550-750 was not assigned, the case of the Draftsmen of the CPWD was referred for compulsory arbitration in accordance with the scheme of Joint Consultative Machinery (JCM). The Board of Arbitration gave its award on 20th June, 1980 which is reproduced below:-

A W A R D

"Having given its careful consideration to the whole of the material on the record and having examined the merits of the case presented both by the official and the staff sides, in the light of the entire material and the arguments advanced by the aforesaid representatives of both sides and having taken into account all other relevant factors, including the special features of the case, the board gives the following award:-

1. The three categories of Draftsman viz. Grade III, Grade II & Grade I shall be inducted in the pay scales shown hereunder against each of the aforesaid categories:

Draftsman Grade IIIRs.330-560

Draftsman Grade IIRs.425-700

Draftsman Grade IRs.550-750

2. The above mentioned categories of Draftsman shall be fixed notionally in their respective scales of pay as aforesaid from 1.1.1973 = in accordance with the recommendations of the Third Pay Commission in respect of weightage and fitment. But for computation of arrears, the date of reckoning shall be the date of recording of disagreement in the Departmental Council viz. 28/29.7.1978.

3. The arrears of pay which shall be worked out in accordance with above mentioned formula shall be paid to the affected employees within three months from the date of receipt of the Award by Ministry of Labour."

4. Accordingly the Draftsmen in CPWD were fixed notionally in the respective scales of pay awarded by the Board of Arbitration w.e.f. 1.1.1973 but were allowed the

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arrears from the date the disagreement was recorded in the Departmental Council of the JCM viz. 28/29.7.1978 vide the then Ministry of Works Housing letter No. 12014(4)/77-EW-2 dated 10th November, 1980 (Page 143 of the paper book). Since the applicants were similarly placed in CWC as the Draftsmen in the CPWD with similar recruitment qualifications and same duties and responsibilities they submitted several representations from time to time ^{to} the respondents to allow them the revised scale as awarded by the Board of Arbitration to the CPWD Draftsmen w.e.f. 1.1.1973. The representations, however, did not elicit any satisfactory response. Notwithstanding, the respondents have since revised the scale of pay of the applicants w.e.f. 19.11.1987 instead of 1.1.1973, as has been done in the case of their counter-parts in the CPWD, Post and Telegraph Department etc.

5. Shri M.K. Ramamurthy, the learned counsel for the applicants broadly justified the case of the applicants for parity in pay scales with the Draftsmen in the CPWD on the lines discussed above and dwelt on the principle of 'equal pay for equal work'. He cited a few judicial pronouncements in support of his arguments which are briefly examined below:-

- i. **1990 (2) SCALE The Employees of Tannery & Foot-wear Corpn. of India Ltd. & Anr. v. UOI & Ors.**

Although the employees of the Tannery and Foot-wear Corporation of India Ltd. were allowed the parity of pay scales as enjoyed by similar employees in the Cotton Corporation of India, the categories in question are general categories of employees like Peons, Watchmen, LDCs, Stenographers etc. We are of the view that what holds goods for non-technical categories doing identical or/substantially

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similar jobs in various organisations cannot be the basis for extending parity in scale of pay to the technical categories, as the quality of work calls for varied and different skills and experience which do not bear any comparison with the categories in the citation given.

ii. **AIR 1990 SC Dec. 2178 FCI Workers' Union v. FCI**

Here again the matter deals with parity of wages between the departmentalised labour e.g. Loader in the FCI and those working in the Calcutta Port Trust.

iii. **ATC 1989 (10) SC 70 Bhagwan Sahai Carpenter & Ors. v. UOI & Anr.**

The short question disposed of in this case is that initially six trades out of 16 which were drawing pay in the semi-skilled grade of Rs.210-290 were upgraded to the skilled grade of Rs.260-400 on the basis of the Expert Committee's recommendation. Later an Expert Committee/Anomaly Committee studied some other trades and on the basis of the job evaluation following the Point-rating method recommended the upgradation of 12 other trades. While the Anomaly Committee recommended that these trades presently in semi-skilled grade of Rs.210-290 be allotted scale of Rs.260-400 w.e.f. 16th October, 1981, the respondents gave effect to the Anomaly/Expert Committee's recommendation only from 15th October, 1984. Their Lordships in the Supreme Court, therefore, held that the petitioners were entitled to get the benefit of skilled grade of Rs.260-400 from October 16, 1981 instead of October 15, 1984, as had been given to the employees of other trades in the skilled grade, as the assignment of the higher scale of pay to some categories from an earlier date and to some others from a later date per se will be discriminatory and will be contrary to the equality clause envisaged in Article 14 and 16 of the Constitution of India as well as the Fundamental Right of equal pay for equal

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work. The issue decided by the Hon'ble Supreme Court in this case is of no help to the applicants.

iv. **ATC 1990 (10) CAT Chandigarh 504 General Secy. All India Lands & Cantonments Service Staff Association, Satwari v. UOI & Anr.**

The Tribunal in this case held that the pay scales are not allotted on the basis of exactly identical duties and responsibilities to different categories in different departments. "What is however to be recognised is that their duties and responsibilities are comparable and equally onerous."

The learned counsel for the applicant further submitted that the Draftsmen in the CWC have been drawing pay at par with Draftsmen of CPWD w.e.f. 9.11.1987. Thus even those Draftsmen in CWC who do not fulfil the qualifications prescribed in the Recruitment Rules notified on 9.11.1987 have been given the same scale of pay as those who fulfil the revised qualifications. The rationale of prescribing this cut off date in this manner cannot be legally justified. Further inspite of the differences which might have been there in the recruitment rules, Draftsmen in CWC and the CPWD have been drawing the same scale of pay till the date of the award of the Board of Arbitration was implemented right since the recommendation of the First Pay Commission were implemented. There is, therefore, no reason to deny the Draftsmen of the CWC the same benefit which has been granted to the Draftsmen in the CPWD in accordance with the award of the Board of Arbitration.

6. The basic facts of the case have not been disputed by the respondents in their written statement. They have submitted that the question of revision of scale of pay on the pattern obtaining in the CPWD in CWC arose with the

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issue of instructions of the Ministry of Finance, Department of Expenditure vide their OM No.F.5 (59) E-III dated 13.3.1984 wherein it was decided that scale of pay of Draftsmen Grade III, II and I in offices, departments of the Government of India other than CPWD may be revised on the pattern of the scales of pay for Draftmen in the CPWD provided their recruitment qualifications were similar to those prescribed in the CPWD. Those who did not fulfil the recruitment qualification prescribed for the corresponding grade in the CPWD were to continue in the scales of pay as already assigned to them w.e.f. 1.1.1973. The benefit of the revision was given notionally w.e.f. 13.5.1982 and the actual benefit was allowed w.e.f. 1.11.1983. It has been contended that the recruitment qualifications for the drawing staff in the Central Water Commission were not comparable to those of the staff in CPWD as is apparent from Annexure A annexed to the written statement. Accordingly the drawing staff of the CWC were not eligible to the revised scales of pay given to the Draftsmen in the CPWD. However, the recruitment rules of the CWC Draftsmen were amended to prescribe similar/same qualifications as obtaining in CPWD w.e.f. 9.11.1987 and it is for this reason that from that date viz. 9.11.1987 the CPWD scales of pay have been assigned to the applicants.

7. Shri P.P. Khurana, the learned counsel for the respondents raised the preliminary objection that the applicants have claimed relief from 1.1.1973 while they filed this OA in 1989. Such a relief cannot obviously be provided to the applicants in view of Sections 20 & 21 of the Administrative Tribunals Act, 1985. The learned counsel further submitted that the case of **F.C.I. Workers' Union v. FCI** (supra) was not relevant to the issues in this case as

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the matter in the FCI arose out of non-implementation of the Mitra Award, granting the benefit to the departmentalised labour of uniform scales of pay etc. as the FCI had contended "that the Mitra Award did not cast continuing obligation on the respondents corporation to allow to the workers impleaded in the depots...."

The learned counsel further submitted that in **1989 (10) 51 Mewa Ram Kanojia Vs. AIIMS SC ATC/** their Lordships in the Supreme Court have held that:

"The doctrine of 'equal pay for equal work' is not abstract one, it is open to the State to prescribe different scales of pay for different post having regard to educational qualifications, duties and responsibilities of the post. The principle of 'Equal pay for equal work' is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay."

8. Mr. Ramamurthy, the learned counsel for the applicants reacting to the above argument submitted that there is no magic about the date of 9.11.1987 as it cannot bestow the educational qualifications prescribed in the Recruitment Rules notified on 9.11.1987 on the existing personnel working in the drawing office of CWC. The amended Recruitment Rules would only affect the future recruits and cannot transform the existing ones who have been recruited in accordance with the earlier Recruitment Rules, yet the revised scales of pay have been given to Draftsmen in CWC from 9.11.1987. The learned counsel also submitted that he

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would like to modify the relief prayed for to the effect that the applicants are seeking is parity with the CPWD Draftsmen in accordance with the scales of pay allotted to them vide the then Ministry of Works, Housing letter No.12014(4)/77-EW-2 dated 10.11.1980. It is for this reason that they are challenging the Government order dated 9.11.87 which arbitrarily denies to the applicants what has been given to the Draftsmen in CPWD.


9. We have heard the learned counsel of both the parties and considered the record carefully. We are of the view that it is not necessary for the posts in question to be exactly identical for allotment of the same scale of pay. All that is required is that the responsibilities and duties attached to the posts should be broadly comparable and similar in nature. Judging by this criterion, the Draftsmen in CWC are in no way doing inferior work or shouldering lower responsibility than the Draftsmen in CPWD. We also see considerable weight in the argument that by notifying the revised Recruitment Rules for Draftsmen in CWC on 9.11.1987, the educational qualifications of the existing personnel do not undergo any change or transformation. Nevertheless they are allotted the scales of pay from 9.11.1987 which have been allotted to the CPWD Draftsmen from the date of the Award. We, however, find that the CPWD Draftsmen went to Board of Arbitration after recording a disagreement in Departmental council J.C.M., and that they were given the benefit of the revised scales of pay as awarded by the Board of Arbitration notionally from 1.1.1973 but were allowed arrears from the date the disagreement was recorded in the Departmental Council of J.C.M. viz. 28/29.7.1978. These circumstances do not obtain in the case of CWC Draftsmen. There is,


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however, no reason for not extending them the benefit of the revised scales of pay at par with the CPWD Draftsmen notionally from 13.5.1982 with actual payment w.e.f. 1.11.1983 as was done in the case of other Draftsmen in all the other departments. We are aware that the benefit was allowed by the Ministry of Finance vide ^{OM} dated 13.3.1984 only to those Draftsmen in whose case the recruitment qualifications are at par with the CPWD. However, having relaxed the condition of qualification from 9.11.1987, we are of the view that the benefit should be made retroactive from the date the Draftsmen in departments, other than the CPWD, have been given the benefit viz. notionally w.e.f. 13.5.1982 with actual benefit w.e.f. 1.11.1983. The application is, accordingly, allowed partly.

10. In the circumstances of the case, we order and direct that the respondents shall allow the scale of pay to the Draftsmen of the CWC at par with the Draftsmen of the CPWD w.e.f. 13.5.1982 with benefit of actual payment w.e.f. 1.11.1983.

There will be no order as to costs.


(I.K. Rasgotra)
21/2/1991
Member (A)


21.2.91
(Amitav Banerji)
Chairman