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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

1. Regn. No. OA 1320 of 1989 Date of decision: 17.4.90
Indian Railway Signal & Telecom Association
through its President, Shri S.K. Singh, ESM, A-Grade
Central Railways, Jabalpur, and 31 others. Applicants

Vs.

Union of India & Others Respondents

PRESENT

Shri A.G. Dhande, counsel for the applicants.

Shri Inderjit Sharma, counsel for the respondents.

2. Regn. No. OA 1880 of 1988

Indian Railway Signal & Telecom.
Association, through its President,
Shri N.S. Bhangoo

Applicants

Vs.

Union of India & others Respondents

PRESENT

Shri B.S. Mainee, counsel for the applicants.

Shri Inderjit Sharma, counsel for the respondents.

CORAM

Hon'ble Shri Justice Amitav Banerji, Chairman

Hon'ble Shri B.C. Mathur, Vice-Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement? —
4. To be circulated to all Benches of the Tribunal? ✗


(B.C. Mathur) 19.4.90

Vice-Chairman


(Amitav Banerji)

Chairman

101

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(Judgement of the Bench delivered by Hon'ble Shri B.C. Mathur, Vice- Chairman.)

As the two applications are identical, a common order is being passed in both the cases.

2. Applicant No. 1 in both the cases is a registered body with headquarters at Delhi and Divisional Offices at various places, including Jabalpur. The applicants are working in the Central Railways in its Signal and Telecommunication Department in the cadre of Electric Signal Maintainers (E.S.M.) and are technically qualified persons. They were required to undergo rigorous training with latest technology including computerisation for achieving

standards and for maintenance of the stations. It has been stated by the applicants that the nature of duties assigned to the cadre of ESM is for 8 hours, but the applicants are required and supposed to be on duty for all the 24 hours and have virtually to maintain 3 to 5 stations simultaneously. There are new inventions and technology which are being advanced for achieving better results which the persons working the cadre of E.S.Ms have to undergo by appearing in the qualifying tests and passing the same. Although hard and rigorous duties have been assigned, there is no channel of promotion prescribed nor the pay scales have been given in proportion to the nature of working and there is complete disparity and anamoly in the pay scales as compared to the other categories of staff in the Railways and in other departments of the Government of India. The present applications have been filed against the order dated 2.7.1987 passed by the Executive Director, Pay Commission, Ministry of Railways, in not allowing them higher scales of pay and any channel of promotion in the cadre as is given to other cadres in the same Department.

3. The Railway Administration has upgraded the signalling technology, but have failed to upgrade the cadre of E.S.Ms in respect of channel of promotion and increase in wages and the members of the Association have to stagnate at the maximum of the pay scales for a number of years. Initially, the Railways

had appointed Wiremen and Battery Men who were supposed to work under the E.S.Ms but these posts were abolished increasing the burden on the cadre of E.S.Ms 'A' Grade independently without any assistance. While officers, Inspectors, and Khalasis, A.S.Ms and other staff of the Railway Administration have benefited by upgradation policy and have been given benefit by the various Pay Commissions, the cadre of E.S.M. has been singled out and, has caused therefore, this discrimination between the same category of persons performing the same nature of duties under the Railways. The E.S.M. 'A' Grade which was Rs. 380-560.00 has been revised to Rs. 1320-2040 by the Fourth Pay Commission. It has been stated that the Pay Commission has virtually upgraded the Grades of Rs. 350-560, Rs. 425-700 and Rs. 550-750 to Rs. 1400-2300 and Rs.1600-2600 respectively. Had the cadre of E.S.Ms been upgraded, they would have been fixed in the pay scale of Rs. 550-750 which has now been revised to Rs. 1600-2600. It has been stated that even in the cadre of A.S.Ms there is a revised pay structure and persons initially working in the cadre of Rs. 210-290 have reached the scale of Rs. 840-1040 which has now been revised to Rs. 2375-3500 within the same span of years by putting less hard duties than assigned to E.S.Ms. Besides, there is no channel for promotion. The action of the Railway Administration is violative of the principles of "equal pay for equal work".

4. The Signal & Telecommunication Department of the Railways has the following categories of staff:

<u>Designation</u>	<u>Grade</u>	<u>Scale of Pay (Pre-revised Scales)</u>
A. Signal Maintainer Mechanical.	Grade III	Rs. 260-400
	Grade II	Rs. 330-480
	Grade I	Rs. 380-580.
	Wireless Maintainer	
B. Signal Inspector	Grade III	Rs. 425-700
	Grade II	Rs. 550-750
	Grade I	Rs. 700-900
	Chief Inspector	Rs. 850-1040

The Maintainers and Inspectors belong to Class III Service. Half of posts of Maintainers (Grade III) are filled up by direct recruitment and the remaining posts by promotion of Khalasis. The vacancies in Grade II are filled up through promotion and direct recruitment (33.13%). The posts in grade I of the Maintainers are filled up by promotion from ranks. The 60% posts of inspectors Grade III are filled up by a process of selection from among the Maintainers Grade I and 40% by direct recruitment. The posts in the Grade II of the Inspectors are filled up on the basis of suitability from the Inspectors Grade III. The vacancies in Grade I of the Inspectors are filled up 75% by a process of selection and 25% by direct recruitment. The posts of Chief Inspectors are filled up from Inspectors of Grade I on the basis of seniority subject to rejection of the unfit.

5. The duties and functions of the MSM, ESM, T CM, etc.

include the maintenance of the signal equipment, block instruments, slotting system, telephones, control telephones, cabins, tele-printing machines; in short, the entire signal system provided on the Railways. Each Signal Maintainer has been given a section of the track consisting of three to five stations with cabins not only to ensure the upkeep and efficient working of the Signal system but also to ensure prompt attendance to failures/defects, if any, with a view to enable the trains with ever increasing speeds to pass through his section safely and efficiently. It is also pointed out that the ever-increasing speeds of the trains and recent introduction of some superfast trains have become possible only on account of modernisation and sophistication of signalling system on the basis of latest inventions in such system in various other countries of the world. It is also pointed out that with the ever-increasing Railway traffic and high speeds, the responsibilities and duties of the Signal Maintainers have tremendously increased.

6. The applicants have stated that the pay scales granted by various Pay Commissions to the applicants and other similar staff, namely, Mistires etc. is as follows:

S. No.	Category	Recommendations of Pay Commissions			
		1st	2nd	3rd	4th
		Rs.	Rs.	Rs.	Rs.
1.	Mistires (Including P.W. Mistires, etc.)	80-160	130-212 150-240	330-480 380-560	1400-2300
2.	MSM, ESM, T CM	100-185	175-240	380-560	1320-2020

24

The aforesaid comparison of the scales would indicate that the MSM/ESM/T CM had always been given higher scales than Mistries and this was not without any reason. The cardinal principle was the duties/responsibilities being performed as also their qualifications including educational qualifications. It is further pointed out by the applicants that so far as P.W. Mistries and other Mistries are concerned, they have always been promoted from Class IV staff and with not much of education or technical qualifications and only in 1985 it was provided that 50% of the vacancies in the posts of P.W. Mistries in the Grade of Rs. 380-560 arising after 1.1.1985 were to be filled up by direct recruits and the remaining 50% by promotion from the ranks. Similarly, other Mistries working in Workshops, Production Units and open lines were promoted from the ranks and there was no direct recruitment quota.

7. The First Pay Commission, Second Pay Commission as well as the Third Pay Commission recommended a higher grade for MSM, ESM, T CM, etc. than the Mistries keeping in view the higher qualifications and responsibilities of such staff. The Mistries were allotted a scale of Rs. 330-560 by the Third Pay Commission.

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It was only after the report of the Anomalies Committee that the scale of pay of Rs. 380-560 was given to the Mistries and they were brought at par with MSM, ESM, T CM.

8. The Railway Board vide orders dated 2.7.1987 (Annexure A-1 to the application) decided that Mistries in the pre-revised scale of Rs. 380-560 should be allotted the revised scale of Rs. 1400-2300 with effect from 1.1.86 which has wittingly or unwittingly gone against the E.S.Ms cadre as their designation is not Mistry regardless of the fact of duties and responsibility on the basis of which higher scale had been granted to the ESMs by the previous three Pay Commissions. The case of the applicants is that the word "Mistry" has no nexus with the duties and responsibilities being performed by a category of workers and also with the pay scales into which the previous scales were converted. The applicants drew the attention of the Tribunal to an extract from the Signal Engineering Manual in which the Mechanical Signal Maintainers had been designated as "Mistries". However, this designation was subsequently changed to Mechanical Signal Maintainers. MSM, ESM etc. were also called "Mistries", till their designations were changed to MSM, ESM, T CM etc. with a view to achieve uniformity of the designation, but they cannot be denied advantages given to Mistries performing similar duties.

9. It has been argued that the Fourth Pay Commission in its report recommended that in Departments the lowest supervisory level should be in the scale of Rs. 1400-2300 and it has also been mentioned in para para 11.37 of the Fourth Pay Commission's report that the post of Rs. 380-560 forms the lowest supervisory level. As such, the E.S.Ms being in the lowest supervisory level are entitled to the scale of Rs. 1400-2300. The applicants pointed out that they were not only incharge of their sections, but were also supervising the work of all the artisans working in their sections. While the MSM/ESM/T CM etc. were empowered to issue fit 'certificate to the Station Masters in regard to the working of the signalling system and passing of the trains, the P.W. Mistries had no similar powers to give fit certificates of the track under their charge. The fit certificate in regard to the track could only be given at a higher level of P.W. Inspector.

10. The respondents in their reply have denied the claim of the applicants and have stated that prior to the setting up of the First Pay Commission, different Railways were having their own systems for classification of artisan staff and allotment of of the pay scales thereto. The First Pay Commission broadly classified the artisan staff into five categories from unskilled to highly skilled. Railway Workers' Classification Tribunal was appointed in 1948 to rationalise the system of classification of artisan staff. The Tribunal classified the 'Signal Maintainers'

(27)

(Electric, Mechanical, Block) in S&T Department as skilled artisans based on the nature of their duties. During the First Pay Commission, the category of Signal Maintainers were on par with artisans of all departments. Another sub-committee was appointed in 1950 to prescribe trade tests for various artisan categories for promotion from one skilled grade to another. The Second Pay Commission provided the following pay scales:

Highly Skilled Gr. I	Rs. 175-240
Highly Skilled Gr. II	Rs. 130-212
Skilled	Rs. 110-180

The Third Pay Commission recommended the continuance of the staff pay scales as given to the artisany and the scales were revised to Rs. 380-560, Rs. 330-480 and Rs. 260-400 respectively. It has been stated that there was no proper distribution of posts amongst various categories of artisans till 1958. In order to ensure a reasonable measure of uniformity, the Third Pay Commission recommended that an expert body be set up to review the same.

Accordingly, Railway Workers' Classification Tribunal, a tripartite Tribunal was set up in 1976 and based on the interim award of this Tribunal, the Railway Ministry issued orders on 24.8.1978 for placing artisan staff on a percentage basis in all departments as under:

Highly Skilled Gr. I	20%
(Since re-designated as skilled Gr.I)	

25%

Highly Skilled Gr. II

(Since re-designated as Skilled Gr. II)

55%

Skilled

(Since re-designated as Skilled Gr. III)

At that time, it was observed that unlike in the case of other artisan staff, there is a provision for direct recruitment in the category of ESM Gr. II (Rs. 330-480) from B.Sc Graduates, who are given intensive training before appointment. Rest of the direct recruitment takes place in skilled grade (Rs. 260-400). In addition, it was also noted that certain establishments on S&T Department had more number of Grade I and Grade II than the prescribed percentages. These factors, to some measure, contributed for differential treatment as compared to other artisan staff. As such, a provision was made in the Railway Board's order No. E(P&A)I, 78, RWCT-76 dated 24.8.76 (Annexure IV) that in particular establishments like CTC, Route Relay interlocking Microwave, etc. the higher existing distribution shall be retained until further orders.

11. A Joint Committee consisting of official side and staff side recommended distribution of 30:35:35 amongst the Skilled Gr. I, Grade II and Grade III artisans in all departments, but 50:30:20 for ESMs. This category was treated differently because it was recognised that they deal with modern signalling system and as such the cadre has to be restructured in a way that it

provided better promotional prospects. The higher percentage amongst the ESMs ensured quicker promotion.

12. The respondents have pointed out that the specific issues raised by the Association that the Signal Maintainers are non-artisans and should be treated on par with the Inspectors were also considered by the Fourth Pay Commission, but it did not give any specific recommendations for either higher replacement scales or superior distribution of posts in different scales of pay. They have granted the normal replacement scales for the Signal Maintainers as under:-

	<u>3rd Pay Commission</u>	<u>4th Pay Commission</u>
Skilled Grade I	Rs. 380-560	Rs. 1320-2040
Skilled Grade II	Rs. 330-480	Rs. 1200-1800
Skilled Grade III	Rs. 260-400	Rs. 950-1500

The Association's contention that the duties of Signal Maintainers are supervisory in nature has been denied. The main functions of this category of ESM relate to maintenance of equipment like block instruments, track circuits, teleprinters, micro-wave communication etc. which are functions requiring manual skills and do not justify the claim for treating them as technical supervisors.

13. The channel of promotion open to Signal Maintainers beyond the skilled Grade I is the Inspectors category and as such it is not correct that there is no channel of promotion. It

It is also stated that staff eligible for overtime and night allowances are granted these allowances according to rules and have to be certified by the controlling officer and the applicants are also getting these allowances according to rules where eligible. The respondents have stated that there is no question of equal and others work - equal pay as the nature of work of ASMs is different from that of the applicants.

14. The learned counsel for the applicants, Shri A.G. Dhande urged that great injustice has been done to the cadre of ESMs as even the lowest grade of Khalasi has been brought at par with them whereas higher scale has been denied to the applicants. He cited the cases of (i) Bhagwan Sahai & others Vs. Union of India & another - AIR 1989 S.C. 1215, (ii) National Museum Non-gazetted Employees' Association and another Vs. Union of India and others - 1988 (8) A.T.C. 789 and (iii) Y.K. Mehta and others Vs. Union of India and another - 1988 (8) A.T.C. 967. These cases deal with the principle of equal pay for equal work.

15. The learned counsel for the applicants, Shri B.S. Mainee, contended that the ESMs were also Mistries and their educational qualifications are being increased constantly due to improvement in technology and science. He said that Mistries who were considered lower than ESMs upto the Third Pay Commission were given a higher scale under the Fourth Pay Commission. His case is that

ESMs were always higher than the Mistries, but now the Mistries get the scale of Rs. 1400-2300 whereas the applicants get the scale of Rs. 1320-2040 which is highly discriminatory. He emphasized that each Signal Maintainer has been given a section of the track consisting of three to five stations with cabins not only to ensure the upkeep and efficient working of the signalling system but also to ensure prompt attendance to failures/defects, if any, with a view to enable the trains with ever increasing speeds to pass through his section safely and efficiently. The ever-increasing speeds of the trains and recent introduction of some superfast trains have become possible on account of modernisation and sophistication of signalling system on the basis of latest inventions in such system in various other countries of the world. It is, therefore, obvious that the responsibility of the applicants has increased considerably and the ESMs who were earlier higher than the Mistries have been given a raw deal. According to Railway Board's letter dated 2.7.1987, Mistries in the pre-revised scale of Rs. 380-560 (for Workshop Mistries) with a special pay of Rs. 35.00/- which was considered the lowest supervisory level to be paid, have been given the scale of Rs. 1400-2300. He also referred to Railway Board's circular dated 25.4.79 dealing with dress regulations for staff of Signal and Tele-communication Department wherein it was clarified that Signal Fitters, Interlocking Helpers, Block and Signalling Maintainers and Block Mistries were also put in the same category.

16. The learned counsel for the respondents said that the Ministries in the Workshops were allowed a scale of Rs. 380-560 with a special pay of Rs. 35/- and were, therefore, considered for the higher scale of Rs. 1400-2300.

17. We have gone through the pleadings and given careful consideration to the arguments by the learned counsel. As far as the cases cited on behalf of the applicants are concerned, these cases have only laid down the law that pay revision of employees of different trades will be from the same date. There is no doubt that there has to be equal pay for equal work, but whether the applicants can be classified as doing the same work as others has not been discussed. The case of Bhagwan Sahai Carpenter deals with allowing higher scale to the employees of some trades in one grade from an earlier date. We feel that the decision in this case does not apply to the present case.

18. Similarly, in the case of National Museum Non-gazetted Employees Association, the decision was when there is parity in employment of persons, there has to be equal pay. The case related to the question of parity in employment between Gallery Attendants of the National Museum, New Delhi, and Record Attendants in National Archives, New Delhi. In this case, notice was issued and the respondents were called upon to file their return but inspite of several adjournments, no counter-affidavit was filed

and in the circumstances, the court was left with no option but to accept the factual allegations of the petitioners. The qualification for the job, nature and conditions of work prescribed for Gallery Attendants and Record Attendants in the two institutions was considered the same. But the Fourth Pay Commission has not given benefits to the Gallery Attendants. Under these circumstances, the court ordered the respondents to equate the services of the petitioners with those of the Record Attendants of the National Archives. Again, the conditions in the present case are not the same.

19. In the case Y.K. Mehta also equal scale of pay is to be given from the same date where there is parity in employment.

20. The question to decide, therefore, is whether there is parity between the cadre of ESMs and others like Mistries working under the Railways. The principle of equal pay for equal work has been discussed in the case of State of U.P. and Others Vs. Shri J.P. Chaurasia & Others - Judgements Today 1988(4) S.C.

53 where their Lordships in the Supreme Court have held that the principle of equal pay for equal work has no mechanical application in every case of similar work. Article 14 of the Constitution permits reasonable classification founded on different basis. The two pay scales in the same cadre are permissible as there can be a difference in the quality of work. Their Lordships held that

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equation of pay or posts must be left to the Executive Government.

It must be determined by the expert bodies like Pay Commission and the court should normally accept the same unless it is shown that it was made with extraneous consideration.

21. We find that the nature of work and the pay scales of different categories of workers in the Railways have been examined by the various Expert Committees as well as the Pay Commissions. It appears that the Third Pay Commission examined these questions in great detail, but the Fourth Pay Commission has merely recommended revision of existing pay scales on the basis of which the applicants were put in the grade of Rs. 1320-

2040. As laid down in J.P. Chaurasia's case, the question of equal pay for equal work will be applicable only if parity is estab-

lished between various categories of workers. The courts cannot

assume the function of expert bodies like the Pay Commission

or even the Anomalies Committee. We do feel that there is a

case for examination as the ESMs were at one time getting a

higher scale of pay than Mistries, but they are now getting a lower

scale in spite of the fact that they have to deal with higher

responsibilities on account of improved technology and introduction

of sophisticated equipment. This is, however, a matter for the

executive authority to examine directly or through an expert

committee. We would commend that the case of the applicants

be reviewed afresh in the light of nature of their work, qualification

etc. and we direct the respondents to examine the issues raised by the applicants afresh and pass necessary orders within a period of six months from the receipt of these orders. With these directions, the applications are disposed of. In the circumstances, there will be no orders as to cost.

B.C. Mathur
(B.C. Mathur)
Vice-Chairman

17.4.90

Amitav Banerji
(Amitav Banerji)
Chairman