

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1409
T.A. No.

1988

DATE OF DECISION 21.9.1990.

Shri P.K. Sarin

Petitioner

Shri G.K. Aggarwal,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.L. Verma,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Vice-Chairman.

The Hon'ble Mr. J.P. Sharma, Member (Judicial).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *m*
4. Whether it needs to be circulated to other Benches of the Tribunal? *m*

MGIPRRND-12 CAT/86-3-12-86-15,000

J.P. Sharma
(J.P. Sharma)
Member (J)

(S.P. Mukerji)
Vice-Chairman

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Central Administrative Tribunal
Principal Bench: New Delhi.

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Regn.No.1409/88

Date of Decision:21.9.1990.

Shri P.K.Sarin

.... Applicant.

Vs.

Union of India & Ors.

.... Respondents.

For the applicant

.... Shri G.K.Aggarwal,
Advocate.

For the respondents

.... Shri M.L.Verma,
Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Vice-Chairman.
Hon'ble Shri J.P.Sharma, Member(Judicial).

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant, an Assistant Engineer(A.E.) filed this application under Section 19 of the Administrative Tribunals Act,1985, claiming equal pay for equal work on the analogy that though the Assistant Executive Engineer (A.E.E.) and the Assistant Engineer(A.E.) of C.P.W.D. discharge the same and similar functions and duties in all material respects, yet the pay scales are different. A.E.E. gets the posting in the pay scale of Rs.2200-4000/- while the A.E. gets the posting in the pay scale of Rs.2000-3500/-. The applicant claims the following reliefs:

- 1) That he may be placed in the scale of Rs.2200-4000/- available to A.E.Es. from October,1984 when the applicant joined the department as A.E.
- 2) That he may be given the same consequential benefits as are available to A.E.Es.

2. The brief facts given by the applicant are that he was appointed as Junior Engineer in C.P.W.D. on 2.8.76 and was posted after promotion as A.E.in October,1984. He does the same work as an A.E.E. does, and inasmuch as an A.E.E. was transferred against the applicant vide order dated 14.4.1987 (Annexure-2). That the duties of an A.E. and that of an A.E.E. are also the same vide C.P.W.D.

Manual (Vol.I) Section 3 page 11 paragraph 7-3(Annexure-III)

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The powers of the A.Es. and A.E.Es. are also the same (Annexure-4). The applicant made a representation to the respondents on 19.1.1938 (Annexure-1) for pay equal to an A.E.E. and since no reply was received from the respondents the present application has been filed for reliefs aforesaid.

3. The respondents filed the reply contesting the application and stated that there is no comparison between the post of A.E.E. and A.E. The post of A.E.E. is a Group 'A' post of Central Engineering Service and the selection and recruitment is through U.P.S.C. by the Combined Engineering Service Examination (CESE) and the appointment is made by the President. The minimum qualification for appearing in the examination for the post of A.E.E. is a Degree in Civil Engineering from a recognised University and after appointment, the next promotion becomes due after serving for four years, in the cadre, to the post of Executive Engineer which is a non-selection post. A.E. is a Group 'B' post of Central Engineering Service and the Director General of Works is the appointing authority. The posts are filled by those candidates who qualify in the CES examination but are placed much below in rank so that they could not be considered for appointment to Group 'A' post. The posts are filled up by diploma holders and Degree holders of unrecognised University and ^{the incumbents} are also promoted to the post of Executive Engineer. ^S The posts are filled by Limited Departmental Examination to the extent of 50 per cent and remaining 50 per cent are filled up by promotion from Junior Engineers on the recommendation of the D.P.C. The Degree holder Assistant Engineers have to render 8 years of service and the Diploma holders 10 years of regular service to qualify for consideration for promotion to the post of Executive Engineer. Thus, according to the respondents, the posts are not comparable to one another because there is vital

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difference in the qualifications, mode and manner of recruitment as well as avenues of promotion. It is further contended that the fact that duties and powers of the A.Es. as well as A.E.Es. are same, do not place the applicant at par with the A.E.Es.

4. We have heard the learned counsel for the parties at length and have perused the records. The emphasis has been laid by the learned counsel for the applicant on the authority of Union of India Vs. Shanti Ram Ghosh & Ors., reported in AIR 1989 SC page 402. In this reported case there was a difference in pay scales of Scientific Assistants Level 'A' and Level 'B', though the stream was common. The authority of that case do not apply to the present case at all. Firstly, as regards the applicant who is a Diploma holder and is a promotee from ^{the grade of} Junior Engineer to the grade of Assistant Engineer. Thus, basically he lacks the minimum qualification which is required for A.E.E. as according to the recruitment rules for Group 'A' post one should be a Bachelor of Engineering from a recognised university. Secondly, even though they are designated differently but the functions and duties in themselves make out that A.E.E. is more qualified and he is only to complete a tenure of eight years in the grade of A.E. for further promotion to Executive Engineer while in the case of the applicant he has to complete a tenure of 10 years as A.E. to be eligible for further promotion as Executive Engineer. In the case before us, the applicant only claims equal pay for equal work and no other aspect of the matter has been challenged in this application regarding the basic qualification and basic difference in promotion to the higher post. So, the applicant is restricted to the fact ^{whether} _{there is a} discrimination in giving ^a different pay scales to the applicant i.e. A.E. from that which is given to the A.E.E.

5. In Mewa Ram Kanojia Vs. A.I.I.M.S., reported in 1989 Vol.10 ATC page 51, while dealing with the aspect of 'equal pay for equal work' the Hon'ble Supreme Court observed as follows:

"The doctrine of "Equal pay for equal work" is not expressly declared a fundamental right under the Constitution. But Article 39(d) read with Articles 14 and 16 of the Constitution declares the constitutional goal enjoining the State not to deny any person equality before law in matters relating to employment including the scales of pay. Article 39(d) read with Articles 14 and 16 of the Constitution enjoins the State that where all things are equal, persons holding identical posts, performing identical and similar duties under the same employer should not be treated differently in the matter of their pay. 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. The Principle of "Equal pay for equal work" has been enforced by this Court in Randhir Singh v. Union of India, Dharendra Chamoli v. State of U.P., V.J. Thomas vs. Union of India, P.Savita v. Union of India Bhagwan Dass v. State of Haryana and Jaipal vs. State of Haryana. In all these cases this Court granted relief on the application of this doctrine of 'Equal pay for equal work.' (Emphasis underlined.)

6. Further, in a Bangalore Bench case, T.S.Ravindra & Ors. Vs. Director Geological Survey of India & Ors. reported in 1989 Vol.3 SLJ CAT page 159, it was held that numerous factors and indices are involved in the comparison of posts/cadres. In short, it has been held that quantity of work may be the same but the quality may differ. Further, it has been held that decision regarding equivalence and scale of pay is job of expert body and not of Tribunal. The Hon'ble Supreme Court in State of U.P. and Ors. Vs. J.P. Chaurasia & Ors. reported in AIR 1989 SC page 19, it has been held that the Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration. Article 39(d) of the Constitution proclaims 'equal pay for

equal work'. This is rooted in social justice. In the reported case, the Bench Secretary of the High Court claimed as of right the pay scale admissible to Section Officers. The relief was granted by the High Court but the Hon'ble Supreme Court allowed the appeal of State of U.P. holding that the Bench Secretary may have the same work but the quality of work may differ. In the present case also there is obvious difference between the A.E. and A.E.E. because the experience for further promotion required for A.E. is more than that of A.E.E. for promotion to the post of Executive Engineer.

7. Again, in Unesh Chand Gupta Vs. O.N.G.C., AIR 1989 SC page 29, it has been held that the nature of work, responsibilities of the post which matters to be evaluated by the management and not for courts to determine. In Bhagwan Sahai Co. and Ors. Vs. Union of India, ATR 1989 Vol.I SC page 67, it has been held that employees of different trades in the scale/grade cannot be treated differently in the matter of conferment of pay scales. But, here the matter relates to two trades of technical nature, where the manual work was involved or the operation of machine. The authority, therefore, cannot help the applicant in any manner whatsoever. In Federation of India, Customs and Central Excise Stenographers Vs. Union of India reported in ATR 1988 SC page 1291, it has been held by the Hon'ble Supreme Court that there cannot always be a mathematical formula for comparing duties and responsibilities of different posts. Certain amount of value judgement of the administrative authorities concerned is inevitable.

8. Giving a careful ^{consideration} to all the aspects, we are of the opinion that it is not open either on the nature of work done or volume of work done for equalising pay, as more often, the function of two posts may appear to be the

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of quality
same or similar but there may be difference in degree/ of
performance. Quantity of work may be the same but the
quality may differ. The equation of post and equation of
pay must ^{better} be left to the executive Government to be
determined by expert bodies like Pay Commission.

9. We, therefore, find that the application is devoid
of merits and dismiss the ^{same} /leaving the parties to bear their
own costs. _h

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(J.P.Sharma)
Member (Judl.)

21.9.90

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(S.P. Mukerji)
Vice-Chairman