

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 237/86

Date of decision: 13/2/91

Hari Lal

Applicant

Versus

Ministry of Communication
and others.

Respondents

Ms. Subhadra Chaturvedi

Counsel for the applicant.

Sh. M. L. Verma

Counsel for the respondents.

CORAM:

The Hon'ble Sh. Justice Ram Pal Singh, Vice Chairman (J).
The Hon'ble Sh. I. P. Gupta, Member (A).

JUDGEMENT

(Delivered by Hon'ble Sh. I. P. Gupta, Member (A)).

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant was initially appointed as T.S. Clerk in the Indian Post and Telegraphs Department w.e.f. 1.3.1974. On 7.5.77 he was appointed as Higher Grade Draughtsman in the cadre of Higher Grade Draughtsman against the outsider quota in the scale of Rs.330 - 560, on passing the prescribed test for appointment. The eligibility qualification laid down for recruitment of higher grade Draughtsman was, in accordance with the department's notification dated 20th September, 1976, 'Matriculation or equivalent examination + a certificate or diploma in Draughtsmanship or Civil Engineering or Surveying or an overseers certificate recognised by the Government of India' and the method of recruitment was by interview/test. The applicant was a matriculate and had passed a certificate course of two years' duration in surveying. He had also qualified in the interview/test whereafter he was appointed as H.G. Draughtsman on 7.5.77.

2. On 6.2.85 the Indian Post and Telegraphs Department (Office of G.M. Telephones, New Delhi) issued an order to the effect that the pay scales of the

Draughtsman in the Telecom Wing be revised as shown in the order, provided the recruitment qualifications were similar to those prescribed in the case of Draughtsman in C.P.W.D. It was also decided that the benefit of the revision of the pay scales would be applicable as shown in the order, to the Draughtsman of Telecom Wing, who were in service on 13.5.82 and should satisfy the conditions as stipulated. For the revision of pay scale from Rs.330 - 560 to Rs.425 - 700 what was stipulated was that the Draughtsman should be holding diploma/certificate in Draughtsmanship (Civil) from a recognised Institution of not less than two years duration including practical experience of atleast one year in an organization of repute.

3. By the order dated 15.5.85 the applicant was given the benefit of the revised scale but it was added that this was being given provisionally and he was liable to reversion to his original pay scale and the amount paid on account of the revision would be recovered in case any adverse decision was taken by the P & T Directorate. By order dated 4.9.85 the applicant was reverted to his original pay of Rs. 330 - 560 and the excess amount paid to him was ordered to be recovered.

4. The applicant has sought the relief for directions with regard to payment of revised pay scale w.e.f. 13.5.82 and payment of arrears and other benefits on account of the revised pay scale from 13.5.82.

5. Learned counsel for the applicant argued that:-

i) The applicant was duly appointed as H.G. Draughtsman on 7.5.77 after fulfilling the required qualifications, then prescribed and after passing the prescribed test.

The denial of the revised pay scale to him on the ground that he does not have a certificate in Draughtsmanship (Civil) is discriminatory, more so when he does possess the qualification of two years duration course of certificate in Surveying. The 1d. counsel for the applicant cited several cases such as A.I.R. 1982-S.C.-879 (Randhir Singh's case) and A.I.R. 1985 S.C. 1124 (P.Savitha Vs. Union of India), 1991 (4) S.L.R. 259 (K.R. Akole and Another Vs. Union of India and others) and A.I.R. 1973 S.C. 1088 (Purushottam Lal and others Vs. Union of India). In P.Savitha's case it was held that Senior Draughtsman in Ministry of Defence production, doing ^{the} same work and discharging ^{the} same functions and being classified into two groups, higher salary/allowed for one group recommended only on seniority cum fitness basis, was violative of article 14 and the principle of equal pay for equal work. In Randhir Singh's case the Drivers belonged to two different departments and while quoting this case in P.Savitha Vs. Union of India the Hon'ble Supreme Court had observed that the case of P.Savitha was much stronger than the facts of the Randhir Singh's case where the Drivers belonged to two different departments, whereas in the case of P.Savitha the Senior Draughtsman divided into two groups were in the same department doing identical and same work. In Purushottam's case the

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Hon'ble Supreme Court observed as follows:-

"Either the Government had made reference (to Pay Commission) in respect of all Government employees or it has not. But if it has made reference in respect of all government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only, it commits the breach of Articles 14 and 16 of the Constitution".

- ii) In K.R.Akole's case it was observed that both the Assistant Programmers in the Civil Engineering Department and Assistant Programmers in the Electronic Data Processing Centre were performing similar nature of duties. Therefore, grant of special pay and better revised pay scale to Assistant Programmers working in Electronic Data Processing Centre should also entitle Assistant Programmers working in the Civil Engineering Department to special pay and better revised pay scales on the basis of doctrine of 'equal pay for equal work'.
- iii) The learned counsel for the applicant also drew attention to para 4 of P & T Department's letter of 6.2.85 (Annexure VI) which said that 'inter se seniority of the officials will not be affected by the pay revision'
- iv) It was also mentioned by the learned counsel for the applicant that in the Civil Wing of the same Department those Draughtsmen who were not having any technical qualification, as prescribed, were also allowed the revised scale.

6. The learned counsel for the respondents contended that:-

- i) The application is barred by limitation.
- ii) The applicant does not fulfil the condition of qualification as mentioned in the order dated 6.2.85 (annexure VI), in that he is not having a diploma/certificate in Draughtsmanship but was having the qualification of certificate in Surveying and on this short ground the application is not entitled to any relief.
- iii) Only those Draughtsmen who are possessing requisite qualification have been given the revised pay scale.

7. We would deal with the point regarding limitation first. The order regarding revised pay scales for Draughtsman in P & T Telecom Wing was issued on 6.2.85. The applicant was given the revised pay scale provisionally by the order dated 15.5.85 (annexure IX). The applicant was however, reverted to his original pay scale by order dated 4.9.85 and this order has adversely affected the applicant since the benefit of revised pay for which relief has been sought, was denied to him. The application was filed on 10.4.86 i.e. well within one year of the order dated 4.9.85. Therefore, the application is not barred by limitation.

8. Though we concede that it is the primary responsibility of the executive government and expert bodies like the Pay Commission to consider allowing the revised pay scales to certain groups and though we also concede that there may be ground for allowing different grades

on the basis of higher qualification either academic or otherwise or an entitlement by any other criteria laid down as observed in P.Savitha's case, yet the following aspects are important enough to merit consideration.

i) It seems somewhat incongruous that a Draughtsman higher grade (level II) is kept in a scale of Rs.330 - 560 equivalent to Draughtsman lower grade (level I) but made to rank higher in seniority than Draughtsman higher grade (level II) in a scale of Rs. 425 - 700. Such a situation will arise in view of para 4 of the department's letter dated 6.2.85 about which attention has been drawn earlier in this order.

ii) The applicant was allowed the revised pay scales from 3.5.86 by order dated 13.10.87. His claim is that he should be allowed this revised pay scales from 13.5.82 as mentioned in the order of 6.2.85 (annexure VI) whereby other Draughtsman fulfilling technical qualification were allowed revised pay scales from that day. Having allowed the revised pay scales notwithstanding the qualifications of the applicant, whatever they may be from 3.5.86, there is a case for allowing the revised pay scales from 13.5.82 itself.

iii) When the applicant was originally appointed as higher grade Draughtsman the qualification prescribed was certificate or diploma in Draughtsmanship or Civil Engineering. Therefore, the certificate in Draughtsmanship was equated

with the certificate in Surveying. There is nothing to prove that certificate in Draughtsmanship is a higher qualification than certificate in Surveying. Having duly appointed, the applicant as higher grade draughtsman on the basis of his certificate in surveying, there does not appear to be any good reason for later prescribing that since the applicant does not have certificate in Draughtsmanship, he should not be given revised pay scale, more so when the nature of duties of H.G. Draughtsman seem to be similar.

iv) The learned counsel for the applicant had brought out that in the Civil Wing of the same department, Draughtsman who were not having any technical qualification, as prescribed, were awarded the revised pay scales. Though in the counter it has been mentioned that only those having requisite qualification have been allowed the revised pay scales yet nothing specific has been mentioned to contradict the statement of the learned counsel for the applicant that in the Civil Wing the prescribed technical qualification as in the case of the applicant has not been insisted upon.

v) Though, cases cited by the learned counsel for the applicant are not identical in facts with those of the present case yet the case of K.R. Akole would ^{lend} support to the present case since the H.G. Draughtsman are performing

similar nature of duties and the applicant was duly appointed as H.G. Draughtsman after fulfilling the requisite qualifications and passing the prescribed test. Further, the applicant had passed the same test for appointment of H.G.Draughtsman which was held for all candidates holding the certificates of Draughtsman (Civil), Draughtsman (Mechanical), Civil Engineering, Surveying etc. etc.

9. In the conspectus of the above facts and circumstances of this case, we direct the respondents to consider and allow the revised scale of H.G.Draughtsman to the applicant from 13.5.82 to 3.5.86 also within a period of three months from the date of receipt of a copy of this order.

10. With the above direction the case is disposed of with no order as to costs.

I.P.Gupta
(I.P.GUPTA) 13/12/91
MEMBER(A)

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN(J)