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Central Administrative Tribunal
Principal Bench, Delhi.

Regn. No. OA-301/86

Date of decision 10.6.1988.

1. Shri J.P. Sharma
2. Shri Gurdeep Singh
3. Shri O.S. Mahajan
4. Shri Y.P. Bahl

Applicants

Vs.

1. Union of India
Through the Secretary to the Govt. of India,
Deptt. of Surface Transport,
Ministry of Transport,
New Delhi.
2. Director General of Light Houses &
Light Ships,
East Block 10, R.K. Puram,
New Delhi.

PRESENT

Shri N.K. Sood

Advocate for the applicants.

Shri M.K. Gupta

Advocate for the respondents.

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985, challenging the recommendations of the Third Pay Commission wherein the Commission recommended two different scales of pay while revising the pay scale of Draftsmen, particularly ^{those} working in the scale of Rs. 205-280.

2. The brief facts of the case are that prior to the revision, ~~the pay scale~~ ⁱⁿ of the post of Draftsmen in the Department of Light Houses and Light Ships of the Government of India was carrying the pay scale of Rs. 205.280. Consequent upon the recommendation of the Third Pay Commission, which was accepted by the Government, the pay scales of the posts of Draftsmen (for 15 Draftsmen) were revised as under even though the work/duties performed by all the Draftsmen were similar:

- 1) Eight Nos. of Draftsmen - Rs. 425-700.
 - 2) Seven Nos. of Draftsmen - Rs. 330-560.
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The applicants were amongst the aforesaid seven Draftsmen and were given the pay scale of Rs. 330-560 although the duties performed by them have always been similar to those Draftsmen who were put in the higher pay scale and, therefore, there has been an unjust discrimination against them. The applicants made a representation to the respondents on 31.1.1986 against the anomaly in the implementation of the recommendations of the Third Pay Commission and they were informed that their representation had been forwarded to the Ministry for consideration. The Ministry in its turn referred the case to the Ministry of Finance, Department of Expenditure and they issued common orders for all the Ministries vide their O.M. dated 11.9.1987 stating that as a result of the revision of the Pay Commission's recommendations, the Government had decided that all those Draftsmen who were in the pay scale of Rs. 205-280 prior to 1.1.1973 should be given the pay scale of Rs. 425-700 notionally from 1.1.1973 and actually from 1.9.1987. The applicants have been aggrieved by this order and have come to this Tribunal for having their salaries refixed and paid from 1.1.1973.

3. The applicants have submitted that the Tribunal should exercise extraordinary powers under Sections 20 and 22 of the Administrative Tribunals Act, 1985, to admit the application and also to do away with the limitation prescribed in Section 21 (2) since the cause of action started with the Supreme Court Ruling in a civil appeal No. 3121 of 1981 in P. Savita Vs. Union of India, decided on 1st May, 1985, as well as in another judgment of this Tribunal in T.194/85 - P.K. Taneja Vs. Union of India - decided on 9.4.86 which were held in favour of the applicants and they have a direct bearing on the case of the applicants.

4. The applicants in their representation dated 31.1.86 had pointed out the anomaly apparent in the implementation of the recommendations of the Third Pay Commission which would also affect their pay scales which were to be revised under the 4th Pay Commission's Report. The Ministry of Finance in the light of the Supreme Court's judgment in P. Savita's case issued instruc-

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tions to place all the Draftsmen in the scale of Rs. 330-560 in the higher scale of Rs. 425-700 with effect from 1.1.1973, but the respondents have not given ^{their salary in} that scale from 1.1.1973.

5. In the case of P. Savita, the Supreme Court have accepted the principle of equal pay for equal work. Since there is no denial by the respondents that the Draftsmen working in the two grades are not doing equal work, the doctrine of equal pay for equal work would apply to this category of officials. This doctrine was also enunciated by the Supreme Court in **Randhir Singh Vs. Union of India & Others** which evolved the equality doctrine embodied in Article 39(d) ^{of the Constitution} and read Article 14 into it. It was held that persons holding identical posts and discharging similar duties should not be treated differently.

6. In O.M. dated 11.9.1987, the Ministry of Finance while accepting the recommendations of the 3rd Pay Commission announced the decision of the Government of India that Draftsmen as were in the pay scale of Rs. 205-280 prior to 1.1.1973 and were placed in the scale of Rs. 330-560 based on the recommendations of the Third Central Pay Commission may be given the scale of Rs. 425-700 notionally from 1.1.1973 and actually from 1.9.1973. It is not clear under what circumstances the pay scales have been given notionally and actually from different dates when they were actually doing the same work all the time. The case of the applicants is that while they have been given the scale from 1.1.1973, they should be given the arrears ^{of salary} with effect from 1.1.1973 as well.

7. The respondents in their reply have stated that the application is against the report of the Third Pay Commission which was advisory in nature and, therefore, the application should be rejected. Without going into the technicalities, in actual practice the application is against Government order denying the applicants actual pay scale of Rs. 425-700 with effect from 1.1.1973. The applicants are challenging Government's orders issued on the basis of the Third Pay Commission's recommendations. It has been argued that the application is hopelessly time barred as it relates to the period very much prior to 1982 and under the A.T. Act, any cause

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of action which took place before 1982 cannot be heard by this Tribunal. This may be technically true, but basically the challenge is against the modified order of the Government, issued by the Ministry of Finance, on 11.9.1987 which is followed by all the Ministries and this is within time and the Central Administrative Tribunal has jurisdiction over matters where the cause of action continues and the principles of natural justice are violated. This application has, therefore, been entertained.

8. I feel that even the recommendations of the Third Pay Commission have not been scrutinized carefully. Attention is invited to the recommendations of the Third Pay Commission where they had stated that "as a transitional measure, persons on the present scale of Rs. 205-280 may be given the scale of Rs. 425-700. For the future recruits, the general scheme should be adopted." The point made by the respondents that the applicants have come to the Tribunal without waiting for the outcome of the application dated 31.1.1986 is not entirely correct as the Government themselves issued general orders on the subject on 11.9.1987. The applicants being aggrieved by this order have rightly come before the Tribunal.

9. From the latest orders of the Government it is seen that they recognised that there was no intelligible ground for differentiation ^{group of} in the two scales of pay for the Draftsmen. The Draftsmen entitled to the higher scale of pay is not selected by any process nor is it based on any merit-cum-seniority basis, but is based only on seniority-cum-fitness. There is no denial anywhere that both these types of Draughtsmen do the same work and discharge the same functions and duties and as such, it will be difficult to deny the benefit of the revised pay scale of Rs. 425-700 to all the Draughtsmen with effect from 1.1.1973.

10. The learned counsel for the applicant invited my attention to this Tribunal's judgment in P.K. Taneja Vs. Union of India - ATR 1986(2) p. 79 - where the Principal Bench held that "the

petitioners and all those similarly placed will be entitled to the higher scale of pay and all consequential benefits including arrears with effect from the date they were promoted as Senior Draughtsmen and the recommendation of the Third Pay Commission became effective. The respondents shall calculate the amount due to the petitioners and all other similarly placed and pay the same within three months from today. We hope all others similarly placed would not be driven to seek similar directions because they were not parties to the petition concerned."

11. The learned advocate for the respondents said that the representation by four persons was made only in 1986 and, therefore, they do not get the advantage of limitation. He also mentioned that the High Court's case dealing with Draftsmen of Jabalpur and the Tribunal's case of P.K. Taneja was in respect of Central Water Commission and, therefore, even otherwise the applicants are not on all fours with the applicants in those cases.

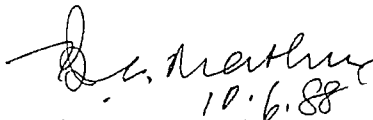
11. I have already discussed the question of limitation and I hold that the present application is covered under the Act as a decision was taken by the Government only in 1987 and as the Supreme Court has held that equal consideration should be given to all those similarly placed. I feel that the applicants have a strong case. Sometimes orders have been passed by Government fixing the notional pay and actual pay from different dates, but this has generally been done where a person has been promoted from a retrospective ^{date} effect. In such cases, notional pay has been fixed with effect from the day promotion took place retrospectively, but ^{actual} higher pay has been allowed only from the date ^{the} person actually started working on the higher post. Without going into the merits of such an order, even this consideration is absent in the case of the applicants here. There is no question of any promotion involved and, therefore, the higher salary has to be given from the date the pay scales were revised. I, therefore, hold that the benefit of the revised pay in the scale of Rs. 425-700 should be allowed to the applicants with effect from 1.1.1973 and the arrears of salary should be given to them with effect from that date. The question

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of revision of pay would not arise as they are already getting the benefit of revised pay, but the arrears should be paid to them within a period of three months from the date of receipt of these orders.

!2 In the circumstances, the application is allowed, but the parties to bear their own costs.


10.6.88
(B.C. Mathur)
Vice-Chairman