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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No OA 1566/1987
OA 2176/1988

Date of decision: 16.02.1993

(1) OA 1566/1987

Shri N.S. Chakravarthy

...Applicant

Versus

Union of India & Another

..Respondents

(2) OA 2176/1988

Shri N.S. Chakravarthy

...Applicant

Versus

Union of India & Others

...Respondents

For the Applicant in (1) and
(2) above

...Shri G.D. Gupta,
Counsel

For the Respondents in (1) above

...Shri P.H.
Ramchandani, Sr.
Counsel

For the Respondents in (2) above

...Shri P.H.
Ramchandani, Sr.
Counsel for
respondent Nos. 1
and 2.

Shri M.L. Verma,
Counsel for
respondent No. 3.

Shri R.P. Oberoi,
Counsel for respondent No

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to
see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,
Vice Chairman(J))

We have gone through the records of these cases and
have heard the learned counsel of both parties. The issues
raised in these two applications are interconnected and it is
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proposed to deal with them in a common judgment.

2. The applicant Shri N.S. Chakravarthy is presently working as Chief Engineer (Civil) in ~~xxxxxxxxxx~~ the Department of Posts though he belongs to the Department of Telecommunications which is under the Ministry of Communications. The prayers made by the applicant in OA 1566/1987 are the following:-

- (b) To issue appropriate order or orders, direction or directions:
- (i) Declaring the relevant portions of the Notification dated 13.03.1987 to the extent mentioned above discriminatory, illegal and striking down the same.
- (ii) Also quashing the Memoranda dated 19.03.1987 and 06.04.1987 to the extent they give the lower scale to the applicant and higher scale to Shri Buntwal, Chief Engineer (Civil) and to the sole incumbents of the post of Chief Engineer (Electrical) and Chief Architect.
- (iii) Declaring the applicant entitled to the same scale i.e. the scale of Rs.5900-6700 as being allowed to Shri Buntwal, Chief Engineer (Civil) and sole incumbents of the posts of Chief Engineer (Electrical) and Chief Architect and that too with effect from 1.1.1986 with all consequential benefits.
- (iv) Directing the respondents to allow the applicant the scale of Rs.5900-6700 with effect from 1.1.1986 with all consequential benefits including arrears of pay etc.
- (c) To issue such other and further order or orders, direction or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case to meet

the ends of justice.

3. The prayers made by the applicant in OA 2176 of 1988 are the following:-

(b) To issue appropriate order or orders, direction or directions;

(i) Quasing the promotion of respondent No.4 Shri S.N. Roy.

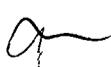
(ii) Directing the respondents to hold a review DPC for making promotions to the post of Senior Deputy Director General (Building Works) by considering the applicant also and to promote him if selected from the date from which the respondent No.4 was promoted with all consequential benefits.

(iii) Declaring that for promotion to the post of Senior DDG (BW) not only the incumbents of the grade of Rs.5900-6700, but even the incumbents of the scale of Rs.5100-5700 were eligible according to the combined seniority list.

(iv) Further declaring that an incumbent of the post of Rs.5100-5700 was not liable to be promoted first to the scale of Rs.5900-6700.

(c) To issue such other and further order or orders, direction or directions as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

4. In OA 1566/1987, the Tribunal passed an interim order on 20.11.1987 that any further promotion for which Chief Engineers are eligible to be considered if made by the



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respondents in future will be subject to the outcome of this application. In OA 2176/1988 the Tribunal has passed an interim order on 16.08.1990 that promotion to the post of Deputy Director General (Building Works) will be subject to the ultimate outcome of the application.

5. There is broad agreement between the parties as regards the facts of the case which are briefly as follows. The applicant was initially appointed as Assistant Executive Engineer (Civil) in the P&T Department in 1964. He was a direct recruit. He was thereafter promoted to the post of Executive Engineer (Civil) in 1969 and to the post of Superintending Engineer (Civil) in 1974. He has stated that he was promoted as Chief Engineer (Civil) on ad hoc basis on 01.01.1981 and on regular basis with effect from 29.03.1985. The version of the respondents is that he was regularised only on 20.06.1986. During the hearing of the case, the learned counsel for the applicant has produced the order dated 20.06.1986 issued by the respondents in which it has been stated that the applicant has been promoted to the grade of Chief Engineer (Civil) in Level II of Senior Administrative Grade with effect from the date he assumed charge of the post. It is further stated that his name in the seniority list of Chief Engineer (Civil) will be placed below Shri S.R. Bantwal and above Shri S.K. Bhattacharya, who were regularised in the grade with effect from 29.03.1985. The applicant had continued on ad hoc basis from 1.4.1984 to

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2.9.1985 and thereafter he had proceeded on leave from 3.9.1985 to 19.06.1986. In view of this, the respondents issued a Notification on 7.5.1991 in which it is certified that the applicant would have continued to officiate as Chief Engineer (Civil) in Level II of Senior Administrative Grade for the period from 3.9.1985 to 19.6.1986 but for his proceeding on leave. A copy of the aforesaid Notification was also produced during the hearing of the case.

6. In the P&T Department there was one post of Chief Engineer Level I in the Senior Administrative Grade and there were three posts of Chief Engineer (Civil) (Level I Senior Administrative Grade). Apart from this, there was one post of Chief Engineer (Electrical) and one post of Chief Architect which were also in Level II of Senior Administrative Grade. All the incumbents of the post of Chief Engineer (Civil) Level II, Chief Engineer (Electrical) and Chief Architect were eligible for promotion to the higher post of Chief Engineer Level I (which was redesignated as Deputy Director General (Building Works)).

7. Prior to the recommendations of the 4th Pay Commission, the scale of the pay of the post of Chief Engineer (Senior Administrative Grade Level II) in the P&T Department was Rs.2250-2500. The scale of the post of Chief Engineer (Civil) (Senior Administrative Grade Level I) was Rs.2500-2700. On the basis of the recommendations of the 4th Pay Commission as accepted by the Government, the scale of pay of Chief

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Engineer (Civil) (Senior Administrative Grade Level I) was revised to Rs.7300-7600. With regard to the other posts of Chief Engineer (Civil), Chief Engineer (Electrical) and Chief Architect in the Civil Engineering Wing of the P&T, the scale of pay of Rs.2250-2500 was revised into two scales, namely, Rs.5900-6700 and Rs.5100-5700. The scale of pay of one post in each of the three streams of Civil Engineering Wing was revised to Rs.5900-6700. There was only one post of Chief Engineer each in the Electrical Wing and in the Architect Wing but there were three posts in the Civil Wing to which the applicant belongs. Only the seniormost person (Shri S.R. Bantwal) was given the revised pay scale of Rs.5900-6700 and the remaining two persons (the applicant and Shri S. Dutta) were given the revised pay scale of Rs.5100-5700.

8. The above mentioned revision of pay scales was made on the basis of the recommendations of the 4th Pay Commission as contained in para 10.74 of Chapter X of Part I of the Central Report of the 4th Pay Commission which is as under:-

"10.74. Three branches, viz., Civil Engineering, Electrical Engineering and Architecture make up the Civil Engineering Wing which looks after the Civil Engineering needs of both the Departments of Telecommunications and Posts. Posts in each of the three branch Rs.2500-2750 at the headquarters which is open to all the three branches, Civil Wing Engineers' association has represented for constitution of an organised service to provide better promotional opportunities. We have

been informed that constitution of a service is already under consideration of the Government. We recommend early finalisation of the matter so that this service may be on par with other organised engineering services. Keeping in view the cadre strength, their role and functions, we recommend that the post in the scale of Rs.2500-2750 at the headquarters may be upgraded and given the pay of Rs.7300- (fixed). We also recommend that three posts in the senior administrative grade (Level-II) scale of Rs.2250-2500 may be upgraded to Rs.5900-6700, one for each branch i.e. civil engineering, electrical engineering and architecture".

9. It may be mentioned in this context that both sides relied upon the aforesaid observations made by the 4th Pay Commission in support of their respective contentions.

10. The applicant has stated that the Secretary of the Department of Telecommunications had taken up the case with the Finance Ministry for giving to the applicant the scale of Rs.5900-6700. We have been informed that pursuant to a cabinet decision the remaining two posts of Chief Engineer (Civil) were also upgraded with effect from 18.04.1990 and that the applicant and Shri S. Dutta were also given the said scale of pay with effect from the said date.

11. In the meanwhile, the respondents had promoted Shri S. N. Roy, Chief Architect as Deputy Director General (BW) in the scale of Rs.7300-7600. This has been challenged in OA 2176/1988.

12. During the pendency of the present application Shri Roy retired on attaining the age of superannuation on 30.06.1990. Thereafter, the respondents by order dated 9.7.1991 asked Shri D.S. Chaudhary, Chief Architect to look after the current duties of DDG(BW) in addition to his duties without any extra remuneration with immediate effect. He retired on August, 1991. This was followed by another Circular dated 3.9.1991 whereby

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Shri S. Padmanabhan, Chief Engineer (Electrical) was asked to look after the current duties of DDG (BW) in addition to his own duties without any extra remuneration with effect from 03.09.1991. Shri Padmanabhan has been promoted to the post of DDG (BW) in April, 1992.

13. The position at present is that by virtue of upgradation of one post each in the three wings of Civil Engineering, Shri Padmanabhan who was Chief Engineer (Electrical) and Shri S.N. Roy, Chief Architect (Civil) were given the higher pay scale of Rs.5900-6700 whereas only Shri S.R. Bantwal who was the seniormost Chief Engineer (Civil) alone was granted the said pay scale of Rs.5900-6700 and not the applicant and Shri S. Dutta who were also Chief Engineers (Civil). By the time the application came to be heard, Shri Bantwal and Shri Roy have already retired on attaining the age of superannuation.

14. The applicant has raised several contentions in support of the reliefs sought by him. According to him, the fixation of two scales of pay for the same post of Chief Engineer is arbitrary and discriminatory. According to him all the incumbents of the three posts of Chief Engineer (Civil) discharged identical duties, functions, roles and responsibilities and that too interchangeably with each other. Yet only one incumbent out of the three said incumbents has been given the scale of Rs.5900-6700 and the remaining two incumbents including the applicant have been denied the said scale and have been given

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a lower scale of Rs.5100-5700 till 18.04.1990. Eventhough, the powers, functions and roles of the incumbents of post of Chief Engineer (Electrical) are, broadly stated, identical with that of the incumbent of the post of Chief Engineer (Civil), yet while the incumbent of the post of Chief Engineer (Electrical) have been given the higher scale of Rs.5900-6700

two incumbents out of the three posts of Chief Engineer (Civil) have been given the scale of Rs.5100-5700. According to ^{ies} him the anomalies in the revision of the scales have been crept in because of the concept of organised and non-organised service. He has submitted that such a distinction is completely illusory and wholly irrelevant. So far as the posts in the three streams of Civil Engineering are concerned, they belong to the organised service and they broadly comply with all the requirement of organised service, since induction through a competitive examination through UPSC, various grades and hierarchies of posts in the said grades, existence of promotional avenues from one post to a higher post and existence of statutory recruitment rules are present in the three streams of Civil Engineering. The 4th Pay Commission had also recommended early finalisation of the matter so that the Civil Engineering service could be designated as an organised Engineering Service. The Secretary of the Department of Telecommunications had himself taken up the matter with the

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Finance Ministry for giving the applicant the scale of Rs.5900-6700 but this was not agreed to by the Ministry of Finance on the ground that the Pay Commission had not recommended the same. The applicant has stated that there are various posts like that of General Manager, Telecom Factory which hitherto were in the scale of Rs.2250-2500 and which too belonged to the non-organised service and yet the scale of the post has been revised to Rs.5900-6700.

15. The contention of the respondents is that they have implemented the recommendations of the 4th Pay Commission in the matter of fixation of pay scales which has been called in question in the present proceedings. In the stream to which the applicant belongs the seniormost person (Shri S.R. Bantwal) was given the pay scale of Rs.5900-6700. They have also contended that in the matter of challenges to the pay scales introduced on the recommendations of the Pay Commission, the Supreme Court has expressed the view that the problem about equal pay cannot always be translated into a mathematical formula. The value judgment in fixing the pay scale has to be left to the administrative authorities and cannot be interferred by the Courts unless it is demonstrated that the same is based either on no basis or arrived at mala fide in law or in fact. The equation of posts

or equation of pay has to be left to the Executive Government. It is to be determined by the Expert Bodies like Pay Commission who would be the best judge to evaluate the nature of duties and responsibilities of the post.

16. The learned counsel for both parties have relied upon numerous rulings in support of their respective contentions and we have duly considered them*. In the instant case, the respondents have implemented the recommendations contained in para 10.74 of the 4th Central Pay Commission's Report in the matter of pay scales of the officers belonging to the Civil Engineering Wing as also their recommendation to bring the Civil Engineering Wing on par with other organised Engineering Services. While the recommendations regarding the pay scales were implemented with effect from 1.1.1986, the designation of the Civil Engineering Wing as an organised service was delayed till 18.04.1990. This has caused the grievance for the applicant who has^{not} been given the pay scale of Rs.5900-6700 from the said date.

17. The 4th Pay Commission's recommendations were implemented

* Case law relied upon by the learned counsel for the applicant:

AIR 1984 SC 541; AIR 1985 SC 1124; AIR 1986(2) CAT 79; AIR 1988(2) CAT 518; and 1990(3) SCC 157

* Case law relied upon by the learned counsel for the respondents:

1991(16) ATC 218; AIR 1988 SC 1291; AIR 1989 SC 19; AIR 1989 SC 1308; JT 1990(3) SC 58; and AIR 1989(2) CAT 532

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by amending the Central Civil Services (Revised Pay) Rules, 1986 by amendment notified on 13.03.1987. The relevant provisions of the amended rules are as under:-

S.No.	Posts	Present Scale (Rs.)	Revised Scale (Rs.)
28.	All posts carrying present scales specified in column 3.	2250-125/2-2500 (other than senior Administrative Grade Level-II of Organised Central Services)	5100-150-5700
30.	All posts carrying present scales specified in column 3.	(a) 2250-125/2-2500 (Senior Administrative Grade Level-II) (b) 2500-125/2-2750 (Senior Administrative Grade Level I)) Senior Adminis- trative Grade medical engineering and other central services)Level-II & Level-I to be merged and given the scale of Rs.5900-200-6700.
		(c) 2500-125/2-2750 (d) 2500(fixed)	5900-200-6700

Civil Engineering Wing

1. SAG post in Headquarters 2500-125/2-2750 7300-100-7600
2. Three posts in the Senior Administrative Grade (one each for Civil, Electrical Engg. and Architecture Branches) 2250-125/2-2500 5900-200-6700

18. It will be seen from the foregoing table that in the case of organised Engineering and other Central Services, the pay scales of Rs.2250-2500 and Rs.2500-2700 which were applicable to Senior Administrative Grade Levels II and I respectively were merged and given the scale of Rs.5900-6700. The Civil Engineering Wing to which the applicant belongs was

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at that point of time ~~xxxx~~ not designated as an organised service. In view of this, one SAG in the scale of pay of Rs.2500-2700 was given the revised pay of Rs.7300-7600 and one post each for the Civil, Electrical Engineering and Architecture Branches in the scale of Rs.2250-2500 was revised to Rs.5900-6700. The remaining two posts of Senior Administrative Grade Civil was given the revised pay scale of Rs.5100-5700. The intention of the Pay Commission was that the respondents would designate the Civil Engineering Wing as an organised service in a reasonable time. This had taken more than 4 years.

19. The applicant is relying upon the doctrine of equal pay for equal work and alleging discrimination. In a catena of decisions the Supreme Court has held that the equation of post or equation of pay must be left to the Executive Government. It must be determined by Export Bodies like Pay Commission. They would be the best judges to evaluate the nature of duties and responsibilities of post. If there is any such determination by a Commission or a Committee, the Court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous considerations. There is an element of value judgment by those who are charged

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with administration in fixing scales of pay and other conditions of service. So long as such value judgment is made bona fide and on intelligible criteria which has a rational nexus with the object of differentiation, such differentiation ~~with regard to~~ will not amount to discrimination.

20. In the instant case, the Pay Commission has not mentioned any reasons for giving the pay scale of Rs.5900-6700 to one out of the three Engineers of the Civil side who were performing the same duties. The recommendation of the Pay Commission to upgrade one post in the scale of pay of Rs.2500-2700 to Rs.7300/- (fixed) is however based on the cadre strength, the role and functions.

21. Soon after the amendment of the Central Civil Services (Revised Pay) Rules, 1986 was notified, the Secretary Telecom with his counterpart in the Ministry of Finance took up the matter of giving to the Chief Engineers in the Civil Wing the pay scale of Rs.5900-6700. During the hearing of the case, the learned counsel for the applicant drew our attention to the following note sent by the Secretary Telecom to Secretary Finance on 22.05.1987:-

3. There is no doubt that the Chief Engineers in the Civil wing of the Departments of Posts and Telecommunications perform exactly the same functions as those in the CPWD. They are also recruited through the same examination held by the UPSC at the junior executive level and get promoted as Chief Engineers through similar process.

4. On the normal principle of equal pay for equal work, they are entitled to the same scale of pay as the Chief Engineers in the CPWD.

5. Merely because the service has not yet been declared as an organised one, to insist on giving a lower scale of pay is inequitable and is bound to result in frustration.

6. This matter had been taken up by us even in the preliminary stage in the Empowered Committee and was left to be decided separately.

7. There is no reason whatsoever now to leave it to be decided only when the service is declared as an organised one.

8. I earnestly request that the legitimate expectations of the Chief Engineers (Civil) be agreed to.

22. The respondents have not stated that the functions, duties and responsibilities of the Chief Engineers in the Civil Wing were different. There were no different recruitment rules for the three posts of Chief Engineers. The posts were also interchangeable. That being so, we are of the opinion that there was no justification in law to deny two out of three incumbents of the post of Chief Engineer the revised pay scale of Rs.5900-6700. In P. Savitha Vs. U.O.I., 1985 SCC (I&S) 826, the Supreme Court has observed that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently.

23. We may now consider the grievance of the applicant in OA 2176/1988. When the respondents initiated the action to fill up the post of Deputy Director General (BW) in 1987, the applicant was not considered for the same on the ground that his pay scale was only Rs.5100-5700 and the officers considered were only those who were in the pay scale of Rs.5900-6700. At

that point of time, no rules had been made for promotion to the post of DDG (BW). The respondents have contended that the applicant does not fulfilled the eligibility criteria for consideration for promotion to the post of DDG(BW) on the ground that he has not put in three years of regular service in the scale of pay of Rs.5900-6700. In this context, the respondents are relying upon the guidelines issued by the Department of Personnel, Public Grievances and Pension on 18.3.1988, according to which the period of qualifying service varies from post to post depending upon the scale of pay and the experience required for manning the higher post. According to the said OM for an officer in the scale of pay of Rs.5100-5700, the period of qualifying service for promotion to a post carrying a pay scale of Rs.5900-6700 is two years and in the case of an officer in the scale of Rs.5900-7300/5900-6700, the period of qualifying service for promotion to the post carrying the pay scale of Rs.7300-7600 is three years. The applicant was given the pay scale of Rs.5900-6700 only on 18.04.1990 and consequently he was not eligible to be considered for promotion to the post of DDG(BW).

24. In the facts and circumstances of the case we are of the opinion that the guidelines issued by the Ministry of Personnel, Public Grievances and Pension would not be applicable to the instant case. As we have already found that all the three Chief Engineers in the Civil Wing were entitled to the revised

pay scale of Rs.5900-6700 on the ground that their functions, duties and responsibilities was identical, we are of the opinion that the applicant should not only have been given the pay scale of Rs.5900-6700 but also ought to have been considered for promotion to the post of DDG(BW) when the other persons were considered for the post.

25. During the hearing of the case we have been informed that respondent No.6 in OA 2176/1988 has been already promoted to the post of DDG(BW) in April, 1992. The other persons who had been promoted to the post earlier have by now retired on attaining the age of superannuation. In the peculiar facts and circumstances and in the interest of fairness, justice and equity, the respondents should consider the case of the applicant for promotion to the post of DDG(BW) by constituting a review DPC, treating him as eligible for consideration for such promotion from the date when the other persons including respondent No.6 (Shri S. Padmanabhan) in OA 2176/1988 were considered for such promotion. In case the review DPC finds him fit for promotion, the respondents shall accommodate the applicant ^{as DDG(BW) α} by creating a supernumerary post for him.

26. In the conspectus of the facts and circumstances of the case OA 1566/1987 and OA 2176/1988 are disposed of with the following orders and directions:-

(1) We hold that the applicant would be entitled to the α

revised pay scale of Rs.5900-6700 from 1.1.1986 to 18.4.1990.

The respondents shall pay the arrears to the applicant expeditiously and preferably within a period of 3 months from the date of communication of this order.

(2) The respondents shall consider the case of the applicant for appointment to the post of Deputy Director General (BW) and for this purpose, constitute a review DPC treating the applicant as eligible for consideration for such promotion from the date when the other persons including respondent No.6 (Shri S. Padmanabhan) in OA 2176/1988 were considered for such promotion. In case the review DPC finds him fit for promotion, the respondents shall accommodate the applicant as DDG(BW) by creating a supernumerary post for him. The respondents shall do the needful in the matter expeditiously and preferably within a period of 6 months from the date of communication of this order.

(3) There will be no order as to costs.

(4) Let a copy of this order be placed in both the case files.

B.N. Dhundiyal
(B.N. DHUNDIYAL)
MEMBER (A)
16.02.1993

G.K.
(P.K. KARTHA)
VICE CHAIRMAN(J)
16.02.1993

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