

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 899/87
T.A. No.

199

DATE OF DECISION 10.9.1990.

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| - Shri A. N. Banerjee and Ors. | Petitioner Applicant |
| Shri G. K. Aggarwal | Advocate for the Petitioner(s) & Applicant |
| Versus | |
| Union of India & Another | Respondent |
| Shri P. H. Ramchandani | Advocate for the Respondent(s) |

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The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D. K. Chakravorty, Administrative Member.

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? / No
4. Whether it needs to be circulated to other Benches of the Tribunal?

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

The applicants, who are working as Junior Engineers in the Office of the Executive Engineer, C.P.W.D. at New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

(i) Quashing of the relevant part of the orders contained in Government of India, Ministry of Finance Resolution No. 14(1)/IC/86 dated 13.9.86 fixing the pay scale of the applicants (Junior Engineers) as Rs. 1400-2300 w.e.f. 1.1.1986;

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(ii) Direction to the respondents that the pay scale of the applicants (Junior Engineers) should be Rs.1640-2900 w.e.f. 1.1.1986;

(iii) Direction to the respondents to grant the applicants (Junior Engineers) of the CPWD the pay scale of Rs.550-900 w.e.f. 1.1.1973;

(iv) Direction to the respondents to pay the arrears of pay and allowances arising out of the grant of the pay scale of Rs.550-900 w.e.f. 1.1.1973 and Rs.1640-2900 w.e.f. 1.1.1986;

(v) Quashing the decisions and directions conveyed in Office Memorandum No. A-11014/1/86-ECVI (Vol. II) dated 5.6.1987 and OM No. A-11014/1/86-ECVI (Vol. II) dated 11.6.1987 and the Central Public Works Department (Subordinate Officers) Junior Engineers Grade I and II (Civil & Electrical) Recruitment Rules, 1987;

(vi) Grant of all consequential reliefs by way of arrears of pay, and allowances etc.

2. The facts of the case in brief are as follows. The posts of Junior Engineer are filled up by promotion from the departmental candidates to the extent of 3 per cent and by direct recruitment to the extent of 97 per cent. The applicants have stated that Draftsmen Grade II and others who pass the departmental competitive examination and acquire the additional qualification of Diploma in Civil/Electrical Engineering, are promoted as Junior Engineers. This averment has been denied by the respondents in their counter-affidavit.

3. The Third Pay Commission fixed the pay-scale of Rs. 330-560 for Draftsmen Grade II and Rs.425-700 for Junior Engineers and Draftsmen Grade I. There was also to be a

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selection grade in the grade of Junior Engineers to the extent of 15 per cent, with the pay-scale of Rs.550-900. The grant of selection grade was on the basis of seniority-~~and~~ cum-fitness. The respondents have stated in their counter-affidavit that selection grade for a post was being sanctioned since the recommendations of the Fourth Pay Commission came into force, depending upon the extent of stagnation in a particular grade of the staff.

4. The contention of the applicants is that the duties and responsibilities of Junior Engineers in CPWD and Inspectors of Works Grade I in the Railways/Supdt. B/R Grade I in the Military Engineering Service (MES) are similar. The aforesaid cadres belong to Class III service as the Junior Engineers in the C.P.W.D. While recommending the pay-scale of Rs.425-700 to the Junior Engineers in the C.P.W.D., the Third Pay Commission recommended the scale of pay of Rs.700-900 for Inspectors of Works, Grade I in the Railways and Rs.550-900 to Superintendents B/R Grade I in the M.E.S. This has been denied by the respondents. They have pointed out that in the M.E.S. and the Railways, there are different grades of Inspectors of Works and Supdts., besides having different duties of these officers.

5. Junior Engineers and their Associations represented about the injustice done to them by the Fourth Pay Commission. They demanded that they should be granted at least the pay-scale granted to the Junior Engineers in the M.E.S., i.e., Rs.550-900.

6. The Government of India revised the pay-scale of Draftsmen Grade II retrospectively w.e.f. 1.1.1973 on the basis of an award given by the Board of Arbitration under

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the scheme of Joint Consultative Machinery (J.C.M.). The pay-scale of Draftsman Grade II was revised from Rs.330-560 to Rs.425-700 and that of Draftsman Grade I from Rs.425-700 to 550-750. The applicants have stated that the claim or the duties and responsibilities of Junior Engineers were not considered by the Board of Arbitration as the same were not within the terms of reference of the Board.

7. The contention of the applicants is that the duties, functions and responsibilities of Junior Engineers are higher than those of Draftsmen Grade I. The respondents have denied this averment and have stated that the two categories perform totally different type of functions.

8. According to the applicants, the respondents ought to have revised their pay-scales from Rs.425-700 to Rs.550-750 on the basis of the parity of the pay-scales recommended by the Third Pay Commission and accepted by the Government. They even claim that Junior Engineers are entitled to the higher pay-scale than Draftsmen Gr. I. This also has been denied by the respondents.

9. The applicants have stated that the Secretary to the Government, Ministry of Urban Development, had written to his counterpart in the Ministry of Finance (Expenditure) stating that the demand of the Junior Engineers for higher pay-scale should be accepted with retrospective effect. They also referred to a letter dated 7.10.1986 written by a Member of Parliament to the then Prime Minister in this regard. The respondents have not denied the fact that the Ministry of Urban Development had supported the case of the

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Junior Engineers for grant of higher pay-scales. They have even taken up the matter with the Fourth Pay basis of the ~~o~~ Commission on the recommendations made by an expert body appointed by it in 1982-83 to the effect that the Cadre of Junior Engineers be bifurcated into two segments, with 50 per cent in the scale of Rs.425-700 and the other 50 per cent in the scale of Rs.550-900. The Fourth Pay Commission recommended the grant of higher pay-scale of Rs.1640-2900 to 50 per cent of the posts of Junior Engineers on functional basis, having regard to the nature of duties/responsibilities.

10. On 13.9.1986, the respondents issued a notification regarding the revised pay-scale for the Junior Engineers, the operative part of the said notification reads as under:-

| Sl.No. | Posts | Present scale | Revised scale |
|--------|------------------------|-----------------------------|--|
| 1. | Junior Engineer (CPWD) | 425-15-500-EB-15-560-20-700 | 1400-40-1800-EB-50-2300 |
| | | 550-25-750-EB-30-900 | 1640-60-2600-EB-70-2900 (Selection grade) |

Promotional Grade to be suitably redesignated and promotion to the same be made as per normal procedure 50% of the total number of posts of Junior Engineer will be in the lower grade of Rs.1400-40-1600-EB-50-2300 and the remaining 50% in the grade of Rs.1640-60-2600-EB-75-2900.

The existing incumbents in the selection grade will be allowed revised scale of Rs.1640-60-2600-EB-75-2900 as personal to them."

The Central Pay Commission also suggested 50% - 50% Grade I - Grade II pay-scale on the pattern of C.P.W.D. The Government, vide Notification dated 13.9.1986, decided to make it 65% - 35% for P & T and 50% - 50% for C.P.W.D.

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Subsequently, the Government decided to upgrade the pay-scale 100 per cent for P & T, whereas in the case of C.P.W.D., only 75 per cent posts have been upgraded, and that too, as a promotion grade.

12. According to the respondents, action was taken in the P & T Department on the above lines on the basis of the recommendations of an Expert Committee on job evaluation.

13. The Junior Engineers' Association has opposed the idea of bifurcation of the Cadre into two cadres. According to them, the report of the Expert Committee was perverse and illogical. According to the respondents, the Expert Committee has recommended 50 per cent of the posts of Junior Engineers be upgraded and filled by promotion and by direct recruitment of Graduates in Engineering. This was in the context of attracting Graduates in Engineering to the non-Gazetted level of Engineering posts in the Department, whose entry had dwindled as a result of certain decisions taken on the recommendations of the Third Pay Commission.

14. The applicants have referred to the setting up of a Cadre Review Committee vide notification dated 16.2.1985, and have contended that with this, the recommendations of the Expert Committee have been superseded. According to the respondents, though a Cadre Review Committee has been set up, it did not mean the supersession of the recommendations of the Expert Committee, or their rejection.

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15. The applicants have referred to the appointment of a Job Evaluation Committee to evaluate the job of Draftsmen, Grade I and Junior Engineers in the C.P.W.D. The Committee stated in its report that the duties of Junior Engineers are more complicated and arduous than those of Draftsmen, Grade I in the C.P.W.D. Respondent No.2 (Director General, C.P.W.D.) issued D.M. dated 5.6.1987 conveying the decision of the Government to upgrade 75 per cent of the total posts of Junior Engineers and place these posts in the scale of Rs.1640-2900 w.e.f. 1.1.1986. The Recruitment Rules for the posts of Junior Engineer were also notified on 26.5.1987. The 1987 Rules laid down that there will be two classes of posts, viz., (1) Junior Engineer Grade I (Civil/Electrical) and with pay-scale of Rs.1640-2900 and (2) Junior Engineer Grade II (Civil & Electrical) with a pay scale of 1400-2300. Column 2 of the Schedule of the Rules laid down thus:

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|---|---|
| Junior Engineer Grade I (Civil & Electrical) | 75% of total No. of posts of Junior Engineers Grade I and Grade II. |
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|--|---|
| Junior Engineer Grade II (Civil & Electrical) | 25% of the total No. of posts of Junior Engineers Grade I & II. variation dependent (subject to workload of CPWD). |
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Junior Engineer Grade I posts were laid down as non-selection posts. The method of recruitment to Junior Engineer Grade I was stated in column No.11 to be "100% by promotion". Column No.12 stated that promotion was to be "from Junior Engineer Grade II (Civil & Electrical) with 5 years' regular service in the grade.

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16. Respondent No.2 issued another O.M. on 11.6.1987 providing that confidential reports for five years upto the year 1984-85, have to be considered by the D.P.C. and that the existing posts of Junior Engineers in the Selection Grade are to be taken into account in arriving at 75 per cent of the posts in Grade I.

17. The respondents have stated that the Junior Engineers and Draftsmen are technical personnel belonging to different disciplines and the qualifications prescribed for recruitment are also different. While the post of Draftsmen Grade I is a promotional post which is filled 100% by promotion of Draftsman, Grade II, the post of Junior Engineer is a direct recruitment post where fresh diploma holders in Engineering are recruited.

18. Applicant No.1 was appointed as Junior Engineer on 26.10.1964. Applicant Nos. 2,3 & 4 were so appointed on 22.7.1985, 17.2.1981 and 1.5.1982 respectively. They have stated that they discharge the same duties, do the same work and have the same responsibilities, irrespective of their seniority/date of appointment.

19. The respondents have stated that Grades I and II of Junior Engineers have not yet been introduced in actual practice and that different job functions and duties will be assigned to the officials working in the two grades.

20. We have gone through the records of the case and have considered the rival contentions. The learned counsel for the applicants cited before us numerous

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authorities of the Supreme Court and we have duly considered them. He has heavily relied on the decisions of the Supreme Court in P. Savita Vs. Union of India, 1985 supp. S.C.C. 94 and in State of U.P. Vs. J.P. Chaurasia, 1989 (1) S.C.C. 121.

21. In Randhir Singh Vs. Union of India, 1982 (3) SCR 293, the Supreme Court directed that the ~~lower~~ ^{lower} ~~higher~~ Constables of Delhi Police Force should be given the same scale of pay at least on par with that of Drivers of the Railway Protection Force. The Court, however, observed that a differential treatment in appropriate cases can be justified where there are two grades based on reasonable grounds.

"It is well known that there can be and there are different grades in a service, with varying qualification for entry into a particular grade, the higher grade often being a promotional ~~avenue~~ for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic, qualifications or experience based on length of service reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Art. 14 if sought to be applied to them."

22. The principle enunciated in Randhir Singh's case was followed in Ramachandra Vs. Union of India, 1984 (2) SCC 141 and P. Savita Vs. Union of India, 1985 Supp. (1) SCR 101. In Ramachandra's case, the arbitrary differential treatment in the pay scale accorded to some professors was

* Cases cited by the learned counsel of the applicants:

J.T. 1990 I.T. Officers' case decided by the Constitution Bench; 1983 (3) SCC 191; 1989 Supp. (1) SCC 610; 1989 Supp. (1) SCC 68; 1989 (2) SCC 299; 1989 (2) SCC 235; 1989 (1) SC 121; 1988 (3) SCC 354; 1988 (3) SCC 91; 1988 (1) SCC 122; 1988 Supp. S.C.C. 673; 1987 Supp. SCC 658; 1987 Supp. SCC 257; 1987 (4) SCC 505; 1987 (1) SCC 532; 1986 Supp. S.C.C. 560; 1986 (1) SCC 639; 1985 Supp. SCC 94; 1984 (2) SCC 141; 1982 (1) SCC 618; 1989 (2) SCC 290.

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struck down. The petitioners therein were holding the posts of Professors in the Indian Veterinary Research Institute under the Indian Council of Medical Research. The pay scale of professors underwent revision. The new recruits got the benefit of revision of scales, but not the petitioner. He was allowed to continue in the old scale. He challenged that discrimination in the Court as being violative of the right to have equal pay for equal work. The Supreme Court accepted the contention and observed as follows:-

"The case in hand is a glaring example of discriminatory treatment accorded to old, experienced and highly qualified hands with an evil eye and unequal hand and the guarantee of equality in all its pervasive character must enable this Court to remove discrimination and to restore fair play in action. No attempt was made to sustain the scales of pay for the post of Professor on the doctrine of classification because the classification of existing incumbents as being distinct and separate from newly recruited hand with flimsy change in essential qualification would be wholly irrational and arbitrary. The case of the petitioners for being put in the revised scale of Rs. 1100-1600 from the date on which newly created posts of Professors in sister discipline in IVRI and other institutes were created and filled up in revised scale is unanswerable and must be conceded."

23. In Savita's case, the artificial division of Senior Draughtsmen in the Ministry of Defence Production with unequal scales of pay was struck down. The Supreme Court observed that "where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently". The Senior Draughtsmen, divided into two groups were in the same department doing identical and the same work. It

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was not a case of different grades created on the ground of higher qualifications, either academic or otherwise, or an entitlement by any other criteria laid down. The justification for this classification was by the mere accident of an earlier entry into service. The Supreme Court held that this was not justified.

24. In Savita's case, the first and second Pay Commissions set up by the Government of India had recommended the same scales of pay for all the Senior Draughtsmen. The Third Pay Commission recommended division of Senior Draughtsmen into two groups with different scales of pay. 50% were put in a higher scale of pay and 50% others in a lower scale of pay. The Supreme Court observed that the above differentiation was not based on any intelligible ground. The group of Draughtsmen entitled to the higher scale of pay was not selected by any process nor was it based on any merit-cum-seniority basis but was based only on seniority-cum-fitness. Both these types of Draughtsmen did the same work and discharged the same functions and duties. The Supreme Court observed in this context as follows:-

".....For this classification, the Government must be able to satisfy the Court of certain other tests which are non-existent, in this case, since it is not in dispute that Senior Draughtsmen, belonging to the two Divisions, do equal and same work. In view of the total absence of any plea on the side of the respondents, that the Senior Draughtsmen who are placed in the advantageous group, do not perform work and duties more onerous or different from the work performed by the appellants group, it will have to be held that this grouping violates Article 14 of the Constitution."

24. We may now deal with the decision of the Supreme Court in Chaurasia's case. In that case, the Supreme Court upheld the decision of the State Government of U.P.

to give a higher pay-scale to Bench Secretaries Grade I to the extent of 30 per cent of the total posts and a lower pay-scale for the remaining posts. The Bench Secretaries were posted to work in the Allahabad High Court. The Supreme Court upheld the decision of the Government which was based on the recommendations of the Pay Commissions. In arriving at this conclusion, the Supreme Court observed that all Bench Secretaries may do the same work, but their quality of work may differ. Under the Rules framed by the Chief Justice of ~~the~~ High Court, Bench Secretaries Grade I, were selected by a Selection Committee. The selection was based on merit with due regard to seniority. They were selected among the lot of Bench Secretaries Grade II. When Bench Secretaries Grade II acquired experience and also displayed more merit, they were appointed as Bench Secretaries Grade I. The Supreme Court observed that the rules thus made a proper classification for the purpose of entitlement to higher pay-scale. The Allahabad High Court had quashed a part of the notification issued by the Government which created Bench Secretaries Grade I, though it did not quash the rules relating to promotion to that cadre. The High Court had directed that all Bench Secretaries, irrespective of their grades, should be given the pay-scale admissible to Bench Secretaries, Grade I. The Supreme Court observed that the High Court had completely overlooked the criterion provided under the Rules. The merit governed the grant of higher pay-scale and that merit would be evaluated by a competent authority. The classification made under the Rules,

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therefore, could not be said to be violative of the right to have 'equal pay for equal work'.

25. Reference may also be made to the recent decision of the Supreme Court in Hundraj Kanyalal Sajnani Vs. Union of India, 1990 (1) SCALE 492. The grievance of the petitioners in two of the petitions decided by the Supreme Court was that the classification of ITOs into two classes, namely, Group 'A' and Group 'B', was discriminatory and violative of Articles 14 and 16 of the Constitution because (a) the classification was not made on an intelligible differentia; and (b) the differentia had no relationship to the object sought to be achieved by the Income Tax Act, 1961 inasmuch as the officers belonging to the two groups did identical work and performed identical functions. It was also the contention of the petitioners that their work and posts are interchangeable and in practice they formed one cadre. It was alleged by them that by maintaining the differentiation the Government in effect was denying equal opportunity, equal pay and equal status to officers doing identical work and performing identical functions. The Supreme Court referred to its earlier decision in K.M. Bakshi Vs. Union of India, A.I.R. 1962 SC 1139 and held that there was a difference in the nature, scope and responsibility of the duties entrusted to the two officers, justifying the differentiation. This was apart from the fact that the matter had been set at rest by the Rules, notifications, circulars and orders which had been

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issued demarcating clearly the functions and jurisdiction of the two. In this context, the Supreme Court also referred to its decision in Federation of All India Customs and Central Excise Stenographers (Recognised) and Others Vs. Union of India & Others, 1988 (3) SCC 91, in which it was observed that differentiation in two classes could be justified on the basis of the nature of the type of work done. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less - it varies from nature and culture of employment. It was further observed as follows:-

".....The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object sought for.....a certain amount of value judgement of the administrative authorities who are charged with fixing the pay-scales has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact."

26. In the light of the legal position enunciated by the Supreme Court in the aforesaid judgements, fixation of pay of Junior Engineers in the C.P.W.D. in two scales and provision for giving higher pay-scales in respect of 75 per cent of the posts, cannot per se be said to be illegal or unconstitutional. The decision to upgrade 75 per cent of the posts of Junior Engineers has been taken pursuant to the recommendations of the Pay Commission and of an Expert Committee which had considered the matter in depth, also taking into account the representations made by the Junior Engineers Association and the recommendations made by the respondents themselves

for grant of a uniform scale to all the Junior Engineers. We are also not impressed by the contention of the applicants that the Pay Commission had made a different recommendation in regard to Inspectors of Works, Grade I in the Railways and Supdt. S/R, Grade I in the Military Engineering Service, as the applicants have not established that the nature and duties of these posts and the qualifications and method of recruitment are the same as that of Junior Engineers in the C.P.W.D. Similarly, there cannot be any comparison of the nature, duties and responsibilities of the Junior Engineers and Draughtsmen Grade I in the C.P.W.D. as the two categories perform different types of function. It is true that the Government have decided to upgrade the pay-scale of the posts of Junior Engineer in the P & T 100 per cent. Here again, the applicants have not established that the nature, duties and responsibilities of the two posts are comparable.

27. In the instant case, the respondents have notified the recruitment rules for Junior Engineers in 1987 providing for two grades - Grade I and Grade II - with different methods of recruitment. The respondents have also stated that Grades I and II of Junior Engineers have not yet been introduced in actual practice and that different job functions and duties will be assigned to the officials working in the two grades. As the methods for appointment to the posts of Junior Engineer Grade I and Junior Engineer Grade II are different under the recruitment rules

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and as the two posts will be assigned different jobs, functions and duties, the provision for upgradation of 75 per cent posts of Junior Engineers with a higher pay-scale, cannot be called in question.

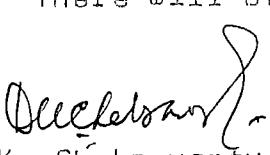
28. In the conspectus of the facts and circumstances of the case, the application is disposed of with the following orders and directions:-

(i) We uphold the validity of the prescription of two different pay-scales to Junior Engineers in C.P.W.D. and upgradation of 75 per cent of the total number of posts, in accordance with the recruitment rules notified on 26.5.1987. However, the higher pay-scale shall not be brought into force unless the suitability of the promotion of Junior Engineers, ~~from~~ Grade II to Grade I is considered by the D.P.C., in accordance with the Office Memorandum issued by them on 11.6.1987.

(ii) Before making any appointment to the posts of Junior Engineer Grade I, the respondents should also amend the recruitment rules so as to specify the job functions and duties to be assigned to the Junior Engineers working in the two grades.

(iii) The respondents shall comply with the above directions within a period of four months from the date of communication of this order.

There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member
10/9/1990


10/9/1990
(P.K. Kartha)
Vice-Chairman (Judl.)