

(16)

Central Administrative Tribunal  
Principal Bench

OA No.857/90

New Delhi this the 19th Day of December, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)  
Sh. C.J. Roy, Member (J)

O.P. Hooda,  
Senior Scientific Assistant  
Solid State Physics Laboratory  
Lucknow Road,  
Delhi-110 007.

...Applicant

(By Senior Counsel Sh. R. Venkataramani with Sh. S.M. Garg,  
Counsel)

Versus

1. Union of India through  
Secretary, Ministry of Defence  
Research & Development Organisation,  
South Block, New Delhi.

2. Director General,  
Ministry of Defence  
Research & Development Organisation,  
'B' Wing, Sena Bhawan, DHQ, PO,  
New Delhi.

...Respondents

(By Sh. M.K. Gupta, Additional Standing Counsel)

ORDER

(Hon'ble Mr. N.V. Krishnan)

The applicant, a Senior Scientific Assistant in the Solid State Physical Laboratory at Delhi, an institution under the Research and Development Organisation of the Ministry of Defence (DRDO, for short), (i.e. respondent No.2) is aggrieved by the OM dated 11.11.88 (Annexure VII) regarding fitment of non-industrial workers in the pay scales recommended by the Third Pay Commission, based on the award of the Board of Arbitration. The applicant is also aggrieved by the letter dated 12.6.89 (Annexure-8) communicating the names of the Senior Scientific Assistants who have been placed in the higher pay scale of Rs.2375-3500 in terms of the OM dated 11.11.88. The applicant also challenges the memorandum

u

dated 27.10.89 (Annexure 11) rejecting the representation made in this behalf by him.

2. The facts are undisputed and can be briefly stated as follows:-

2.1 A dispute arose about the scale of Senior Scientific Assistants (SSA), Chief Draftsman and Foreman in the Ministry of Defence after the Third Pay Commission recommendations were received. An Expert Classification Committee was appointed which suggested certain pay scales for these categories. There was a disagreement between the Government and the employees over these recommendations.

2.2 A scheme for Joint Consultative Machinery (JCM) and compulsory arbitration for Central Govt. has been notified by the Cabinet Secretariat. This scheme was made applicable to civilians paid from defence estimates by the Ministry of Defence notification dated 4.2.71. The scheme is at Annexure A of the reply.

2.3 Due to disagreement, the issue was referred to a Board of Arbitration (Board, for short) headed by Justice M.L. Jain in accordance with the JCM scheme. Two references were made viz. CA-9/83 and 10/83. Particulars thereof are given at Annexure 4. CA-9/83 relates to the scientific staff employed in the various Directorates of the Ministry of Defence while CA-10/83 refers to the pay scale in regard to Storekeeping staff, Draftsman and Civil Motor Drivers. We are concerned with CA-9/83.

K

18

2.4 The terms of references in CA 9/83 were as follows:-

"Terms of Reference C.A. No.9

(a) Staff Side Proposal

Considering the peculiar and varied nature of work of Scientific Staff employed in the various Directorates of the Ministry of Defence and their inter-changeability between the Supervisory Staff employed in the same or similar establishments under the Ministry of Defence and considering their promotional chances, whether the Scientific Staff are entitled to the following pay scales and grade structure namely, Level I Rs.380 - 560, Level II Rs. 425 - 700, Level III Rs. 550 - 900, Level IV Rs. 840 - 1040 and if so, in what proportion.

(b) Official Side proposal

Whether the recommendations in respect of non-industrial jobs should have been made by the ECC and thereafter accepted by the Government especially when the Third Pay Commission had merely authorised the Expert Classification Committee to undertake evaluation and consequent revision of Pay Scales of industrial jobs only."

2.5 Both the references were considered together and an award was given by the Board on 12.8.85 (Annexure 4). The award, in so far as it is relevant for the disposal of this case reads as under: -

"COMBINED AWARD IN C.A. REFERENCE NO. 9 & 10 OF 1983

Having given careful consideration to the material placed on record the arguments of the representatives of the parties, the Board hereby awards as follows :

1.(a) The demand of the staff side for the grant of pay scale of Rs. 840-1040 to Senior Scientific Assistants and Draftsmen working in the Research & Development Organisation and Directorate General of Inspection (both in the Ministry of Defence) is accepted. This pay scale will be in addition to those which are already admissible to these categories in said two organisations.

(b) The proportion of posts to be allocated in the above mentioned new pay scale should broadly bear the same proportion as that obtaining at present in the foreman category vis a vis the highest grade of Assistant Foremen in the said organisations."

167

2.6 The Board stated that its award would come into operation w.e.f 22.9.82.

2.7 Govt. was not agreeable to implement the award w.e.f. 22.9.82 and had decided to implement it from 1.1.88 without any modification. In this regard, the approval of the Parliament was obtained as provided for in the Scheme. Accordingly, orders were issued giving effect to the award by the impugned Annexure-7 O.M. dated 11.11.88 which, inter alia, read as follows :-

"The Government have accepted this award. Accordingly, I am directed to convey the sanction of the President to the upgradation of the posts of Senior Scientific Assistants in DRDO and DGI to the extent given as under:-

	Existing Scale	Revised Scale	No. of posts of SSAs to be given the scale in Col.(iii)	
(i)	(ii)	(iii)		
As per 3rd Pay Commission's Report	Rs.550-900	Rs.840-1040	822	101
As per 4th Pay Commission's Report	Rs.1640-2900	Rs.2375-3500		

2.8 In pursuance of the Annexure-7 O.M., the list of SSAs who were placed in the posts in the higher pay scale was notified on 12.6.89 (Annexure 8) but the list is not enclosed. Admittedly, the name of the applicant was not mentioned in that list.

2.9 He, therefore, submitted a representation on 28.7.89 (Annexure X) to the Director, Solid State Physical Laboratory. The thrust of the representation was that he

has not been treated equally with the persons who were given the higher pay scale and that the classification was not reasonable, though he was doing the same work and duties as the others who have been given the benefit of the higher pay scale. The representation of the applicant was rejected by the Ministry in its letter, dated 27.10.89 (Annexure XI) to the Director, Solid State Physical Laboratory. It stated that in regard to filling the posts in the higher pay scale, the Committee adopted the principle of selection on the basis of seniority-cum-fitness. The Committee considered all eligible SSAs who had completed three years' of regular service in the SSA grade as on 1.1.88 and place them in the higher pay scale on the basis of the seniority on record of service. The name of the applicant was far below in the seniority list as compared to the vacancies and hence he could not be considered and his representation was rejected.

2.10 It is in these circumstances that this OA has been filed, seeking the following reliefs:-

- "(b) pass an order quashing the award contained in sub-para (b) of para 1 of the award dated 12 Aug., 1985 rendered by the Board of Arbitration (JCM) in reference CA No. 9 of 1983 (Annexure-III);
- (c) pass an order quashing the office memorandum dated 11-11-1989, issued by the Ministry of Defence, by which the communication of the Government accepting the arbitration award conveyed (Annexure-IV);
- (d) pass an order directing the respondents to grant to the applicant the scale of Rs.2375-3500/- with effect from 1-1-1986 as is being paid to all Senior Scientific Assistants, in terms of the office memorandum dated 12-6-1989;

K

- (e) pass an order directing the respondents to give all other consequential benefits, on the basis of the applicant's entitlement to get the scale of Rs.2375-3500/-."

3. The respondents have filed a reply stating that the Board itself had stated that the higher scale of pay was to be given only to a certain proportion of the staff, as indicated by it. In the circumstances, the reliefs now sought cannot be granted. It is further stated that the Board had given the scale of pay of Rs.2375-3500 as an additional scale, over and above the existing scale of Rs.1640-2900 and that therefore, it has accordingly been treated as a non-functional selection grade. It is also stated as follows in para 27 of the reply :-

"There is no division of SSAs cadre by implementing the Arbitration Award. The SSAs have only a single scale i.e. Rs.1640-2900. The pay scale of Rs.2375-3500 is purely a non-functional selection grade granted to SSAs in addition to their own pay scale, upto 822 posts. The SSAs as a group are entitled to next promotion viz: Group 'B' post - Junior Scientific Officer and grant of non-functional selection grade does not affect their interse seniority."

4. Sh. R. Venkataramani, the Senior Counsel was heard at length in this regard. An objection has been raised by the respondents that the award of the Board which is binding on both sides cannot be challenged before the Tribunal. The learned counsel submitted that all such awards are subject to judicial review if there is an allegation regarding violation of fundamental rights. He relied on the judgement of the Supreme Court in 1976 (2) SCC 82 Rohtak Industries v. Rohtas Industries Staff Union and Others. However, as this objection was not pressed, we do not go into the merits thereof excepting to hold that such awards are not immune from judicial review, especially when violation of fundamental rights is alleged.

92

5. The main ground on which the award is challenged is that Article 14 of the Constitution has been violated and principle of equal pay for equal work has not been observed. The Board came to the conclusion that the grievance of the SSAs was genuine and that their pay scales have to be increased to Rs.840-1040 (pre-revised), because it was satisfied that their duties and responsibilities were the same as Foreman, who were getting the same. Therefore, it was neither justified nor authorised to limiting this benefit to only a certain proportion of posts of that cadre based upon the proportion obtaining between Foreman and Assistant Foreman in that Organisation. This was an arbitrary classification which had no nexus with the issue under consideration. The duties being discharged by the applicant, both before the Award and after its implementation are the same as the duties and responsibilities rendered by the persons who have been given the benefit. Accordingly, the Board had violated Article 14 of the Constitution when it restricted the benefit to a certain proportion of the SSAs. This is contrary to the law declared by the Supreme Court in P.Savita vs. Union of India 1985 (Supp.) SCC 94.

6. He also pointed out that the Board of Arbitration itself has not given any reasons as to why the benefit should be restricted only to a certain proportion of the cadre. It has also not indicated how that award should be given effect to. It is Government which issued the impugned Annexure-7 O.M. dated 11.11.88 giving effect to the award as in the extract reproduced in para 2.7.

*Handwritten signature*

7. Even in this O.M. no reasons have been given as to why the posts were upgraded. It is in the reply to the oA that the respondents have stated that this has been done as the award of the Board of Arbitration really amounts to creation of a non-functional grade for this group. It was argued that when the award itself is silent in this regard, it is not open to Govt. to give this as a reason in justification of the award. He relies on the decision of the Supreme Court in Commissioner of Police, Bombay vs. Govardhan Das - AIR (39) 1952 SC 60 as also the case of M.S. Gill vs. Chief Election Commissioner - 1978(7) 1 SCC 405 in which the decision in Bhanji was followed.

8. The learned counsel for the respondents submitted that there has been no violation of any fundamental right and that the Board had considered all aspects of the matter, referred to it and given its award. In this connection, he points out that the Madras Bench of the Tribunal has disposed of OA-905/92 involving a similar issue on merits on 25.4.94. That OA was filed by the Draftsmen who, as can be seen from the above narration, were also covered by the award of the Board of Arbitration. In their case also the Board gave an award that only a certain proportion of their posts should be given the higher pay scale. That was challenged in the Madras Bench by certain applicants. It was dismissed on merits with liberty to the applicants to place their grievance, if so advised, before the 5th Pay Commission.

9. We have given our anxious consideration to the rival contentions.

12



94

10. At the outset we notice that on the basis of the averment made by the applicant himself in para 4 (iii) and 4 (iv) of the OA, one can come to the conclusion that there are basic differences in the recruitment to the posts. Therefore, prima facie, the SSAs and the Foremen cannot be treated to be equal for the purpose of fixation of pay. Extract of para 4 (iii) is reproduced below:-

"4(iii) The eligibility criteria for appointments to the posts of SSAs and Foremen according to the recruitment rules notified on 26th June, 19618 are as follows:

<u>SSA</u>	<u>FOREMAN</u>
i) M.Sc. or Degree in Engineering 1 year experience.	i) Degree in Engineering with 2 years experience.
or	or
ii) Diploma in Engineering with 4 years experience.	ii) Diploma in Engineering with 5 years experience
iii) B.Sc. with 4 years experience"	

It is for this reason, perhaps, that there were differences in the pay scales of the posts as seen from para 4 (iv) of the OA reproduced below:-

"4(iv) The pay-scales under the II and III Pay Commission recommendations in respect of the two categories were as follows:

<u>SSA</u>	<u>FOREMAN</u>
Old scale 325-575	Old Scale 450-575
Revised Scale 550-900	Revised Scale 840-1040

It may be seen that the qualifications for appointment to the posts of SSAs and Foremen are almost the same and these have been effective in the DRDO before the Third Pay Commission's report and are still in force. Previously, there was only a little gap between the pay scales of the two categories which was unreasonably widened by reason of the recommendations of the Third Pay Commission."

ke

12. The argument of the learned counsel for the applicant seemed to suggest that the pay scale of Rs.840-1040 was recommended by the Board on the consideration that the SSAs, are discharging the same duties and have the same responsibilities as the Foremen who are in the higher pay scale of Rs.840-1040. As pointed out earlier, paras 4(iii) and 4(iv) of the application suggest that so far as the recruitment is concerned, these two categories of officials are not on par. We have carefully gone through the extracts of the award of the Board which have been exhibited by the applicants at Annexure-5. Under the heading 'Terms of Reference in CA-9/93 the Board has set out in detail the staff side proposal and the official side proposal and thereafter, it took note of the facts of the case leading to the appointment of the Expert Classification Committee Headed by the Justice K.C. Puri after the Third Pay Commission had submitted its recommendations, which gave rise to a controversy and necessitated the reference to the Board. While dealing with the 'Present Controversy' the Board set out the grounds in support of the case of the staff side. They highlighted the discrimination between the Senior Assistants (Rs.550-900) - - - - - and - - - - - the Foremen(Technical)(Rs.840-1940). The Board noted what the staff side had stated in this regard as follows :-

"To highlight the discrimination between the Sr. Scientific Assistants (550-900) and the Foreman Technical (840-1200), it is stated that the promotion grade for both the categories is one and the same, i.e., Junior Scientific Officer in the pay scale of Rs.650 -1200."

xxxx

xxxxx

xxxx

xxxx

"Science graduates recruited by the DGOF in the chemical, explosive and ammunition factories as Supervisors Technical have their promotional avenues upto the level of Foreman Technical in the scale of Rs.840-1040, whereas the

u

science graduates recruited by the DGI and DRDO as Scientific Assistants and who are working side by side with the former can go only upto the scale of Rs.550-900."

XXXX XXXXX XXXX XXXX

"The ratio of various grades in the Railways have also been cited and it is alleged that no such ratio is fixed in the Defence. Reliance is also placed upon the III Pay Commission Report and ECC report and the job evaluation sheet."

Thereafter the 'Prayer' of the staff side was noticed. Inter alia, it was as follows:-

"Prayer:

In view of the grounds explained above:-

(1) the Senior Scientific Assistants Grade I may be awarded with the scale of Rs.840-1040 equivalent to that of Foreman and the said scale should be promotional scale from the pay scale of Rs.550-900 now granted to the SSAs. The Sr. Foreman Laboratory in the Navy, now in the pay scale of Rs.650-960 may also be awarded this scale of Rs.840-1040;

(2) the SSA at present in the pay scale of Rs.550-900 may continue in the same scale as SSA II;"

XXXX XXXX XXXX XXXX

"(5) the percentage of the various grades may be as follows:

SSA I -	840-1040	-	25%
SSA II -	550-900	-	25%
JSA -	425-700	-	40%
JSA/Lab.			
Asstt. -	380-560	-	10%"

In other words, it is clear that the main prayer before the Board was that there should be a higher pay scale of Rs. 840-1040 to which they can be promoted. It was suggested that 25% of the cadre strength should be in the lower pay scale of Rs. 550-900 and designated as SSA-II and 25% of the cadre strength should be in the higher pay scale of Rs. 840-1040 and designated as SSA-I. Therefore, the thrust of the reference was that an additional higher scale of the pay should be fixed for the SSAs as a further promotional avenue. It is for this reason that the Board decided that the proportion of posts

u

97

in the higher scale should broadly bear the same proportion which was obtaining in the Foremen category, i.e., as between Foremen and the Assistant Foremen.

14. In the circumstances, there is no question of any waiver of any fundamental rights by the staff side in relation to which the learned counsel for the applicant argued that fundamental rights cannot be waived. That principle has no application to the present case.

15. We are next concerned with the question whether SSAs who have the same duties and responsibilities can be placed in two different pay scales and whether this classification is not arbitrary and, therefore, violative of Article 14 of the Constitution.

16. The learned counsel for the applicant has relied heavily on the judgement of the Supreme Court in P. Savita vs. Union of India (1985 (supp.) SCC 94 to contend that the clarification has to be struck down.

17. We have seen that judgement. That dealt with the pay scales applicable to Senior Draftsmen in the Director General of Ordnance Factories. It is seen from the judgement that the Third Pay Commission recommended the scale Rs.330-560 to Draftsmen. The posts of Senior Draftsman is filled up by direct recruitment and also by promotion from Draftsmen. The Third Pay Commission fixed two pay scales for the post of Senior Draftsman, viz. Rs.330-560 and Rs.425-7090. Accepting this recommendation the Government ordered that the Senior Draftsmen holding that post on 31.12.72 would be given the scale of

C

Rs.425-700 while others would be given the scale of Rs.330-560. It is this classification which was challenged. Admittedly, all the Senior Draftsmen were doing the same duties. The only explanation given by the respondents was that this was based on seniority which was not acceptable to the Court as sufficient to meet the requirements of law. The Court also noticed that persons already working as Senior Draftsmen are denied the higher pay scale only because they were not promoted on an earlier date. Thus some Draftsman who have been "promoted" earlier as Senior Draftsmen, but not sufficiently early, were kept on the pay scale of Rs.330-560, which was the scale of Draftsmen, i.e., in the feeder category. That is, even after promotion their pay scale continued unchanged. In this connection the judgement in Randhir Singh's (1982 (1) SCC 618) was recalled in which the discrimination in the pay scales of Driver (Constable) in the Delhi Police, as compared to other Drivers in the Delhi Administration was considered. On that basis the classification of Senior Draftsmen was struck down.

18. That was a case of classification where there was no other ground except seniority which was found unacceptable. It is not as if the Supreme Court has declared in any judgement that the pay scales are determined only on the quantum of work done or the nature of the responsibilities. That is no doubt one of the most important criteria for determining the pay scale but not the only one. Thus, in Kishori Mohan Lal Bakshi vs. Union of India (AIR 1962 SC 1139), which was referred to in Savita's case supra, it was held as follows:-

R

"The abstract doctrine of equal pay for equal work has nothing to do with Article 14. Article 14, therefore, cannot be said to be violated where the pay scales of Class I and Class II Income-tax Officers are different though they do the same kind of work. Incremental scales of pay can be validly fixed dependent on the duration of an officer's service."

19. Such an observation has been made in para 7 of the judgement in Randhir Singh's case also, to which a reference is made in Savita's case, as follows:-

"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 Article 14, if sought to be applied to them."

20. In the present case, it is clear that the higher pay scale was adopted in order to give the SSAs opportunities of promotion to this higher pay scale, which existed in the cadre of Assistant Foremen who got such promotion as Foremen. In order to ensure parity in promotion, the scale was restricted to a certain number of SSAs only, which also had its basis on the position obtaining in the cadre of Foremen vis-a-vis Assistant Foremen lest a fresh disparity should be created between the two cadres.

21. That such a classification can be made is supported by the Supreme Court's judgement in C.R. Seshan vs. State of Maharashtra (AIR 1989 SC 1287), which, to our mind, clinches the issue. That related to the pay scales of the Personal Assistants in the High Court of Bombay. At the relevant period, the petitioners were working as Personal Assistants to the High Court Judges. On 8.2.80

ll

30

the Association of Personal Assistants made a representation to the State Govt. complaining about the lack of promotional avenue and they requested to convert 1/5 of the posts of Personal Assistants into those of Private Secretaries in the pay scale of Rs.1000-1500, keeping the pay scale of Rs.650-1250 for the remaining posts. Out of 38 posts, Govt. converted 7 posts of Personal Assistants as Private Secretaries in the higher pay scale. The petitioners could not be accommodated as Private Secretaries. They challenged the order on the grounds of its being discriminatory, irrational, unjust and based on an unintelligible classification. The Supreme Court dismissed the petition after recalling their judgement in State of U.P. vs. J.P. Chaurasia (AIR 1989 SC 19) and after observing as follows:-

"It was observed therein that there is a difference in the quality of work performed by persons of longer experience and a higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is very common for career service. The entitlement to higher pay scales depending upon seniority-cum-merit or merit-cum-seniority and the distinction so made in the same cadre will not amount to discrimination. It was also stated that classification based on experience is a reasonable classification having a rational nexus with the object thereof and to hold otherwise, it would be detrimental to the interest of the service itself."

22. That exactly is the position which obtains in the present case. The SSAs have been given an opportunity of promotion to the pay scale of Rs.840-1040. It is not even necessary to justify the classification on the ground that such a classification exists among Assistant Foremen and Foremen. But it is a fact that this was the consideration which led to the Award wherein, firstly, a higher pay scale is also added to the cadre

ll

31

structure and secondly, that pay scale is made applicable to only a certain proportion of the posts keeping in view the situation obtaining among Foremen.

23. We have to add that the judgement of the Madras Bench of the Tribunal, brought to light another aspect, if the claims of the applicants are allowed. That Bench has observed as follows:-

"Apart from this we may also observe that if the relief prayed for by the applicants is to be granted it would amount to the abolition of the scale of Rs.2000-3200 itself and would mean that the persons in the scale of Rs.1640-2900 have to get promoted directly to the grade pay of Rs.2375-3500, which is not the normal practice in the Government departments."

That Bench took note of the corresponding revised pay scales. Sticking to the pay scales considered by the Board, this would mean that acceptance of the claims by the applicants would mean that scientific staff in the pay scale of Rs.425-700 will, instead of getting promotion to the grade of Rs.550-900, be promoted to the pay scale of Rs.840-1040, the only scale applicable to SSAs. None would be in the pay scale of Rs.550-900 which would, in effect, stand abolished. This would result in a serious disparity between pattern of pay structures and promotion in the case of SSAs and Foremen where the promotion is from Rs.425-700 to Rs.550-900 and then to Rs.840-1040. In other words, the Board had to guard against creating a new kind of discrimination which would give a cause of action to any other group.

24. Much reliance has been placed by the learned counsel on the dictum in Commissioner of Police, Bombay vs. Govardhan Das Manji (AIR 1952 SC 16) that a

12



public order has to stand on its own and that it cannot be supported by any later explanation which is reiterated in M.S. Gill's case (1978 (1) SCC 405. The impugned orders are not statutory orders. The orders gave effect to the Board's Award. There was no need then to give any reason in respect of those orders. When these orders are challenged on certain specific grounds, Government is entitled to state in the reply that those orders do not suffer from any such defects.

25. In the circumstances, after full consideration of the various arguments advanced, we are satisfied that the applicant has no case and accordingly the OA is dismissed.

*19/12/74*  
(C.J. Roy)  
Member(J)

'Sanju'

*18.12.84*  
(N.V. Krishnan)  
Vice-Chairman