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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2441/2004

New Delhi, this the 4th day of July, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

1. Transport Employees Welfare Association through its President H.C.Azad Sehgal
S/o Sh. Uttam Chand Sehgal
R/o 23/25, Moti Nagar
New Delhi – 110 015.
2. Mr. M.P.Yadav, Inspector
S/o Late Shri Kashi Prasad Yadav
Member, T.E.W.A.
R/o C-210 Gokul Puri
Delhi – 110 094.
3. Inder Singh Bhist (Sub Inspector)
S/o Shri R.S.Bhist
General Secretary,
T.E.W.A.
C/o 5/9, Under Hill Road
Delhi.
4. Radhey Shyam (ASI)
Member, T.E.W.A.
C/o 5/9, Under Hill Road
Delhi.
5. Ravi Behl
Head Constable
S/o Shri Prem Behl
R/o Subhash Nagar
Delhi.
6. Anil Kumar,
Constable
S/o Late Sh. Ram Rikh
Member, T.E.W.A.
R/o H.No.139, Garhi Village
New Delhi – 110 055. ... Applicants

(By Advocate: Sh. Shyam Babu)

Versus

1. Union of India
Through Secretary
Ministry of Home Affairs
South Block
New Delhi.
2. Union of India
Through Secretary
Ministry of Finance
North Block
New Delhi.
3. Government of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat
Players Building
I.P.Estate
New Delhi.
4. Commissioner (Transport)
Government of NCT of Delhi
5/9, Under Hill Road
Delhi. ... Respondents

(By Advocate: Sh. Ajesh Luthra for Rs. No.3 & 4 and None for R-1 and R-2.)

O R D E R

By Mr. Justice V.S. Aggarwal:

The Transport Employees Welfare Association is a society registered under the Societies' Registration Act. Other applicants are Inspectors, Sub-Inspectors, Head Constables and Constables in the Enforcement Wing of Transport Department. By virtue of the present application, they seek to declare that they are entitled to same pay scales of their corresponding ranks in Delhi Police with effect from 1.1.1996.

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2. Some of the other facts alleged are that in the year 1959, there was a complete parity in the matter of pay scale between the Transport Department as well as Delhi Police. It was as under:

Date	Name of Constable	Head Constable	Asstt. Sub Inspector	Sub Inspector	Inspector
	D.P.75-1-85-EB-2-95	100-3-130	135-5-175	168-8-240	325-15-475
1.7.59	C.JAIL 50-3-80-4-100	60-4-80-5-120	-	-	-
	TPT ENF 75-1-85-2-95	100-3-130	135-5-175	168-8-240	325-15-475

3. The parity was disturbed after the recommendations of the Third Pay Commission. The scales of Delhi Police were upgraded and after Fifth Central Pay Commission, scenario that emerged was as under:

S.No.	Designation	Scale of Police	Scale of Enforcement Staff of Transport Department
1.	Inspector	6500-10500	5000-8000
2.	Sub-Inspector	5500-9000	4000-6000
3.	ASI	4000-6000	3050-4590
4.	Head Constable	3200-4900	2750-4400
5.	Constable	3050-4590	2659-4000

4. The applicants contend that principle of 'equal pay for equal work' applies as they are discharging the same and similar duties like the personnel in the Delhi Police. They are being subjected to hostile discrimination and, therefore, they are entitled

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to the same pay scales as of the corresponding rank in Delhi Police.

5. The representation made by the applicants in this regard was directed to be considered but it has been rejected on 9.3.2004 with the following order:

- (a) The pay scales of various categories of employees in the Government are determined on the basis of the recommendations made from time to time by expert bodies like the Pay Commissions set up by the Government for the purpose. The Applicants had also made a representation to the Fifth Central Pay Commission for the revision of their pay scales, but the said Commission did not recommend grant of higher pay scales to them;
- (b) The nature of duties performed by Applicants does not bear any similarity with the nature of duties performed by the Delhi Police personnel. The charter of the duties of the former is restricted to enforcement of the various provisions contained in the Delhi Motor Vehicles Rules, 1993 for performance of which they function as pollution level test inspectors, motor vehicles inspectors, inspectors (Enforcement), etc. On the other hand, the functions performed by the Delhi Police personnel relate to maintenance of law and order, prevention, detection and investigation of crime, regulation and management of traffic and the like; and
- (c) The nature of functions and duties performed by the Delhi Police personnel are highly arduous, hazardous and stressful in nature and are not in this aspect also comparable with the functions and duties assigned to the Applicants.”

6. Needless to state that in the replies filed, the petition is being contested.

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7. The learned counsel for the applicants has drawn our attention to the fact that the claim of the applicants had been considered and found to be favourable by the Delhi Administration and, therefore, there is no justification for rejecting the claim. Strong reliance was placed on the decision that took place in the room of the Chief Minister on 10.8.1998, the operative part of which reads:

“1. A detailed discussion was held in the meeting on the pay scales of employees of Enforcement Branch, Department of Transport and it was noticed that these employees are being paid less pay-scales than the employees of Delhi Police despite similar nature of work and higher educational qualifications. After discussing the matter at length it has been decided that the same pay scales and allowances be given to these employees as given to Delhi Police personnel in all ranks. In this regard Hon’ble Chief Minister issued instructions that a Cabinet Note be prepared to bring pay scales of these employees equal to pay-scales of Delhi Police and put up the same in the meeting of cabinet to be held in next week for sanction.”

8. It was further contended that even Delhi Administration vide its letter dated 30.1.2003 had recommended to the Government of India in this regard after a detailed study and it reads:

“The duties of Delhi Police and Enforcement of Transport Department although are similar but cannot be held equivalent. However, the duties of Enforcement Staff are similar to Delhi Traffic Police. The Enforcement Staff of Transport Department also implements various provisions of Delhi Motor Vehicle Act and Rules in most polluted and hazardous

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conditions on roads. They act in odd hours and also impound the vehicles, assist in prosecution in the courts, and various other activities.

It is worth while to mention here that the existing pay scale as per recommendation of Vth Pay Commission of Enforcement Officer working in Enforcement Branch is Rs.6500-10500 if the scale of Inspector is recommended equivalent to the Inspector of Delhi Police there will be anomaly in pay parity between Inspector and Enforcement Officer being having same pay scale who (Enforcement Officer) at present is the controlling officer of the Enforcement field staff including the Inspector (Enforcement).

In this connection the advice of the Finance Department, Govt. of NCT of Delhi was asked who advised to refer the matter of pay parity to Govt. of India as this matter is not in the competency of Govt. of NCT of Delhi (Copy of extract placed at Annexure 'C'). Further, there was no specific recommendation by the 5th Pay Commission in respect of Pay-Scales for the staff of the Enforcement Wing of the Transport department in chapter 104 at the report which deals with the pay scales of posts of Union Territory. Moreover, this Government of National Capital Territory of Delhi is no competent to revive the scales of the employees of this Government, the competency lies with the Government of India.

As the competency lies with the Government of India (anomaly committee) to sole the disparity and issues of granting parity in the pay scales to the rank of Transport Department (Enforcement) with those of officials/officers working in Delhi Police."

9. On careful consideration of the same, we find that so far as this particular contention is concerned, it has to be stated to be rejected.

10. The question of fixation of pay scales falls within the domain of the executive. Unless there is a hostile discrimination,

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the scope for judicial interference is limited. The quality of work performed by different sets of persons holding different jobs will have to be evaluated. This was highlighted by the Supreme Court in the case of **STATE OF HARYANA & OTHERS v. JASMER SINGH & ORS.**, JT 1996(10) SC 876. In the cited case, persons working on daily wages were granted the same scales with those holding regular posts on principle of '**equal pay for equal work**'. The decision of the **Punjab and Haryana High Court** was set aside and it was held:

"8. It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay-scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted."

11. Similarly, in the case of **SHYAM BABU VERMA AND OTHERS v. UNION OF INDIA AND OTHERS**, (1994) 2 SCC 521, the Supreme Court held that the nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The findings of the Supreme Court are:

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"The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them. The principle of 'equal pay for equal work' has been examined in State of M.P. v. Pramod Bhartiya [(1993) 1 SCC 539] by this Court. Before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary. Then only it can be held that there has been a discrimination, within the meaning of Article 14 of the Constitution."

12. In the case of **UNION OF INDIA AND OTHERS** v.

PRADIP KUMAR DEY, 2001 SCC (L&S) 56, the Supreme Court held that for applying the principle of 'equal pay for equal work', there should be sufficient material before the Court for comparison. In absence of the same, the Court should not interfere and the petition as such could not have been so allowed. It was reiterated that it was the function of the Government which normally acts on the recommendations of the Pay Commission. Change of pay scale of a category has a cascading effect.

13. Similarly, in the case of **STATE BANK OF INDIA & ANR.**

v. **M.R. GANESH BABU & ORS.**, JT 2002 (4) SC 129, the Supreme Court held that functions may be same but responsibilities make a difference. One cannot deny that often the difference is a matter of degree. The Supreme Court held:

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“16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallised and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgement is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgement of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court.”

14. In fact, at this stage, we deem it necessary to refer to other decisions of the Supreme Court wherein earlier though there was pay parity which was disturbed, the Supreme Court held that the question of interference would not arise. In the case of SHER SINGH & ORS. v. UNION OF INDIA & ORS., JT 1995 (8) 323, it held that Courts should not interfere in matters of Govt. policy except where it is unfair, mala fide or contrary to law. From the



facts, it appears that earlier there was pay parity to the library staff with the teaching staff. The University appointed a Committee. It recommended continuance of the pay parity. The library staff found that their pay parity had been disturbed and the teaching staff was given benefit from retrospective date. The same question of 'equal pay for equal work' came into consideration. The Supreme Court held that in such matters, the Courts will not interfere.

15. More close to the facts of the present case is the decision of the Supreme Court in the case of **STATE OF HARYANA & ANR.**

v. **HARYANA CIVIL SECRETARIAT PERSONAL STAFF ASSOCIATION**, JT 2002 (5) SC 189. In the cited case, prior to 1986, the PAs in the Civil Secretariat, Haryana were enjoying higher pay scale than PAs in the Central Secretariat. When the Fourth Central Pay Commission gave its report, the scales of the PAs was revised to Rs.2000-3500 from 1.1.1986. The Haryana Government had accepted the recommendations but in regard to the PAs in the Civil Secretariat, the revision was made to the Rs.1640-2900 with some special pay. Their grievance was that parity of the pay scale with their counterparts in the Central Government had been disturbed. The Punjab and Haryana High Court had allowed the petition. The Supreme Court set aside the said order and held:

"8. While making copious reference to the principle of equal pay for equal work and equality in the matter of pay, the High Court overlooked the position that the parity sought by the petitioner in the case was with employees

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having only the same designation under the central government. Such comparison by a section of employees of state government with employees of central government based merely on designation of the posts was misconceived. The High Court also fell into error in assuming that the averment regarding similarity of duties and responsibilities made in the writ petition was unrebutted. The appellants in their counter affidavit have taken the specific stand that no comparison between the two sections of employees is possible since the qualifications prescribed for the P.As in the central secretariat are different from the P.As in the state civil secretariat. Even assuming that there was no specific rebuttal of the averment in the writ petition that could not form the basis for grant of parity of scale of pay as claimed by the respondent. The High Court has not made any comparison of the nature of duties and responsibilities, the qualifications for recruitment to the posts of P.As in the state civil secretariat with those of P.As of the central secretariat."

16. From the aforesaid, it is clear that it is within the domain of the Executive or the expert body like Central Pay Commission to go into the said facts. The Tribunal would be slow to interfere unless there is hostile discrimination.

17. Before proceeding further, it must be mentioned that so far as the communication of Delhi Administration is concerned, to which reliance is placed, the first part of it is a decision that took place in the room of the Chief Minister and the other is the letter communicated. At best, it can be taken to be a recommendation because ultimately decision has to be taken by the concerned Ministry in the Government of India.

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18. The pay scales have to be fixed in accordance with the duties that are performed. If at one time, there was a parity of pay scales, it can be disturbed subsequently as held in the case of **SHER SINGH & ORS. (supra).**

19. From 1.1.96, the pay scales to Delhi Police were accorded, keeping in view their nature of duties. It goes without saying and was rightly pointed by the counsel for the Delhi Administration, that officials working in Delhi Police have to undergo more arduous duties like prevention of crime, control of riots, investigation of cases, security of VIPs and their duties involve odd hours. The applicants on the contrary are just performing the duties of Enforcement of Motor Vehicles Act and Rules framed there under.

20. The persons working in Delhi Traffic Police are part and parcel of Delhi Police and if necessary, their cadres can be changed. Therefore, they have rightly been granted the same scales as other persons in Delhi Police.

21. In the peculiar facts, therefore, the applicants indeed cannot claim that they have to face hostile discrimination. It cannot in the peculiar facts be termed that the claim of the applicants is liable to be so allowed, merely because they are also uniformed and they do certain works under the Motor Vehicles Act.

22. There is no ground to hold that duties of Delhi Traffic Police and Delhi Police are identical to the applicants.

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23. Resultantly, the OA being without merit must fail and is dismissed.

~~Naik~~
(S.K.Naik)
Member (A)


(V.S. Aggarwal)
Chairman

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