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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2122/2003

with

O.A. No. 2132/2003

R.A. No. 18/2003

O.A. No. 2123/2003

O.A. No. 763/2004 ✓

New Delhi, this the 18th day of August, 2004

HON BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON BLE SHRI S.A.SINGH, MEMBER (A)

O.A. No. 2122/2003:

Anup Kumar Sinha & Others . . . Applicants
Vs.
Union of India & Others . . . Respondents

R.A. No. 18/2003 in O.A. No. 2132/2003:

Shyam Sunder Sharma & Ors. . . Applicants
Vs.
Union of India & Others . . . Respondents

O.A. No. 2123/2003:

Sehdev Paswan & Others . . . Applicants
Vs.
Union of India & Others . . . Respondents

O.A. No. 763/2004:

Naresh Kumar & Others . . . Applicants
Vs.
Union of India & Others . . . Respondents

NOTE: Details of the memo of parties of the
aforesaid applications are in their respective
applications.

Presence: Shri S.K. Aggarwal, counsel, Sh. K.K. Sharma
proxy counsel for Sh. Susheel Kumar,
Sh. Rudeshwar Singh and Sh. Sishir Pinaki
with Shri George Parackin, counsel for the
applicants.

Sh. A.K. Bhardwaj, counsel for respondents.

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ORDER

Justice V.S. Aggarwal:-

By this common order, we propose to dispose of the Original Applications, namely, O.A.Nos.2122/2003, 2123/2003, 763/2004 and R.A.No.18/2003 in O.A.No.2132/2003.

2. These applications were pending in different Benches of this Tribunal. To avoid inconsistency in the orders, they were all transferred to Principal Bench. They all involve a common question, and therefore, can be disposed of together.

3. For the sake of convenience, we are taking the basic facts from the Original Applications pending in the Principal Bench of this Tribunal entitled **Shri Anup Kr. Sinha & Others v. Union of India & Others** (O.A.No.2122/2003). Applicant No.1 was initially appointed as Data Operator Gr. 'C' in the office of the Registrar General of India. On 10.9.1990, Joint Registrar General of India had communicated the decision of the Department of Expenditure whereby the President of India was pleased to redesignate the cadre as Data Entry Operator Gr. 'B'. In terms of the recommendations of the Fourth Central Pay Commission, the scale of pay of Electronic Data Processing Staff (for short 'EDP staff') in the Ministry of Railways was declared Rs.1350-2200, which was initially Rs.330-560. It was the same pay scale which applicants were drawing prior to the recommendations of the Fourth Pay Revision Committee.

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4. So far as the applicants and other Data Entry Operators Gr. 'B' in the Census Operations are concerned, the Revision Committee had recommended their replacement scale as Rs.1200-2040 from 1.1.1986. The Data Entry Operators Gr. 'B' in the Department of Census were aggrieved by the said lower pay scale recommended by the Fourth Pay Revision Committee. Certain Data Entry Operators Gr. 'B' filed OA 249/91 before the Cuttack Bench of this Tribunal. They prayed for the scale of Rs.1350-2200. The petition was allowed. Similarly circumstanced Data Entry Operators Gr. 'B' had made similar prayer before the Hyderabad Bench of this Tribunal which too was allowed followed by other decisions of this Tribunal at Lucknow. The Union of India challenged the said decisions and the Supreme Court dismissed the Special Leave Petition.

5. Some of the applicants had filed OA 94/98 in this Tribunal seeking that the said scale of Rs.1350-2200 should be made payable from 1.1.1986. The said relief was allowed to DEO Gr. 'B'.

6. The Central Government had set up the Fifth Central Pay Commission which submitted its recommendations in 1997. The said recommendations were accepted on 30.9.1997. The cadre of Data Entry Operator Gr. 'B' was merged in the Data Entry Operator Gr. 'C'. As per the recommendations of the Fifth Central Pay Commission, the cadre of DEOs Gr. 'B' was done away with. Vide order dated 6.1.1998, the scale

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of pay of DEO Gr. 'B' was upgraded to Rs.4500-7000. The scale of the applicants too was revised to the same amount referred in the preceding paragraph.

7. The grievance of the applicants is that Ministry of Railways had issued Railway Service (Revised Pay) Rules, 1997. Under the heading EDP in Clause-11.3, the DEOs who were in the scale of Rs.1400-2300 were given the scale of Rs.5000-8000. Even the Department of Planning and National Informatic Centre, Government of India had also revised the pay scale of Tradesman Gr. 'C' from Rs.1400-2300 to Rs.5000-8000. It is asserted that applicants are being discriminated and that they should also be awarded the scale of Rs.5000-8000 from 1.1.1996 and decision of the respondents to the contrary should be quashed.

8. In the reply filed, the application has been contested. The basic facts pertaining to the litigation that arose after the Fourth Central Pay Commission were not disputed. Prior to Fifth Central Pay Commission, the post of Data Entry Operator Gr. 'B' is stated to be in the scale referred to above. Its promotional post, viz., Junior Supervisor was in the scale of Rs.1400-2300. The post of Senior Supervisor was in the scale of Rs.1640-2900. The Fifth Central Pay Commission recommended the merger of pay scale of Rs.1350-2200 and 1400-2300. It also recommended upgradation of pay scale of Junior Supervisor from 1400-2300 to 1600-2660. The Fifth Central Pay Commission is stated to be an expert body and examined the present structure of emoluments and conditions of

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service of different employees. The scale of Rs.5000-8000 was not recommended for DEOs Gr. 'B'. So far as the other departments are concerned, it is pointed that the same were given keeping in view their recruitment rules, duties and responsibilities, etc.

9. We have heard the parties' counsel and have seen the relevant record.

10. Learned counsel for the applicants eloquently drawn our attention to the backdrop to which we have referred to above. The applicants contend that on earlier occasions, they have been given the pay parity with similarly situated DEOs Gr. 'B' in the Ministry of Railways and other similar Departments. After the Fifth Central Pay Commission, the applicants cannot be discriminated in this regard.

11. So far as the legal position is concerned, it is not much in dispute. Equal pay for equal work is not a Fundamental Right but a constitutional goal. The Supreme Court has, more often than once, held that this is a fact which falls within the domain of the Expert Body and unless there is hostile discrimination, the Court/Tribunal should not interfere. 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

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posts on principle of 'equal pay for equal work'. The decision of the Punjab and Haryana 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 male fides, its evaluation should be accepted."

12. 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:

"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.

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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."

13. 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.

14. 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:

"16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principal 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 judgement by those who are charged with the administration in fixing the scales of pay and other

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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."

15. More recently in the case of UNION OF INDIA v. TARIT RANJAN DAS, 2004 (1) SCSLJ 47, the Supreme Court held that where Pay Commission had already taken care and considered the question, there was no question of any equivalence. The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant of work and fatigue involved are some of the factors, which cannot be lost sight of.

16. 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) SC 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

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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.

17. 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 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

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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."

18. From the aforesaid, it is clear that it is basically within the domain of the expert bodies like Central Pay Commission to go into the said facts. This Tribunal would be slow to interfere unless there is hostile discrimination.

19. So far as the DEO Gr. 'B' is concerned, their matter had been considered by the Fifth Central Pay Commission. It went on to hold that EDP work cannot be considered scientific in nature. The recommendations of the Fifth Central Pay Commission read:

"55.103 We have carefully examined the cadre structure of EDP staff in RGI offices. Our recommendations are as under:-

- I) We are of the considered view that number of pay scales are dependent on functional requirements. Redesignations be considered by the Department keeping in view our general recommendations and job profile of posts.
- ii) In order to remove stagnation and improve the career prospects, the following pay structure is recommended in line with our general recommendations:-

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Designation	Pay Scale(Rs.)	No. of Existing	No. of Recommended posts
Data Entry Operator Grade 'A'	1150-1500	1320-2040	288
Data Entry Operator Grade 'B'	1350-2200	1400-2300	1152
Junior Supervisor	1400-2300	1600-2660	216
Senior Supervisor	1640-2900	1640-2900	72
Data Processing Assistant-II	1600-2660	1640-2900	12
Data Processing Assistant-I	New level	2000-3500	12

iii) As the routine EDP work cannot be considered scientific in nature, we are not in a position to accept the demand for coverage of EDP staff by Flexible Complementing Scheme."

20. In other words, the Fifth Central Pay Commission was already aware of the earlier controversy and had granted different scales keeping in view the nature of the work and other factors.

21. At this stage, we deem it necessary to mention that on earlier occasion when Fourth Central Pay Commission report was received, the petitions filed by DEOs had been allowed. But it cannot be used so as to state that the respondents cannot re-apply their mind and give higher scale of pay to another section of persons particularly as mentioned at the Bar in the Railways. Therefore, the earlier litigation which ensued after the Fourth Central Pay Commission cannot be used by the applicants for their advantage.

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(13) 22. In fact SHYAM SUNDER SHARMA & OTHERS v. UNION OF INDIA & OTHERS filed an O.A. 490/2001 before the Jaipur Bench of this Tribunal. It was decided on 9.5.2003. This question as to the difference in pay scale crept in consequent upon the report of the Fifth Central Pay Commission. The Jaipur Bench of this Tribunal held:

"8. It is seen that prior to the recommendations of the V Pay Commission Report, there were two grades of the Data Entry Operators viz., 1150-1500 and 1350-2200. The third pay scale was Rs.1400-2300 meant for the Junior Supervisors. On the recommendations of the V Pay Commission, the pay scale of Data Entry Operators Grade 'A' was upgraded from Rs.1150-1500 to Rs.1200-2040 and the pay scale of Data Entry Operators Grade 'B' was upgraded to Rs.1400-2300. The replacement pay scale of Rs.1400-2300 is Rs.4500-7000. There is no error in the process of implementation of the V Pay Commission Report.

9. In the matter of the Railways, the position was different. The existing pay scale of Rs.1350-2200 for the Data Entry Operators (Entry grade), had already been revised to Rs.1400-2300 under the general Recommendations on the Pay Structure of E.D.P. Staff. The promotion grade was Rs.1600-2660. It is manifest that the pay scales of the Data Entry Operators in the Railways was higher than the pay scales of the applicants before the V Pay Commission Report. The disparity obviously has not arisen because of implementation of the V Pay Commission recommendations."

23. We find ourselves in respectful agreement with the said view point. The applicants on that count, therefore, cannot claim parity of pay scales. Otherwise also, as already referred to above, it was an administrative decision. While recommending the pay scales, the Fifth Central Pay Commission had taken

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care of the duties, responsibilities and all other factors. We find that it is not, therefore, the case of a hostile discrimination.

24. Resultantly, the abovesaid Original Applications being without merit must fail and are dismissed. Consequently, there is no ground to review the order passed by the Jaipur Bench. The said Review Application is also dismissed.

(S.A.Singh)
Member (A)

(V.S. Aggarwal)
Chairman

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