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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration No. 889 of 1986 (T)

Union of India & OthersDefendant-Appellants

Versus

Ravi Shanker TewariPlaintiff-Respondent

Hon. Ajay Johri, A.M.
Hon. G.S. Sharma, J.M.

(By Hon. Ajay Johri, A.M.)

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Appeal No. 83 of 1985 Union of India and Others Versus R.S. Tewari against the judgement and decree dated 1.1.1985 passed by the Vth Additional Munsif Kanpur in Suit No. 238 of 1983 R.S. Tewari Versus Union of India & Others has been received on transfer from the Court of District Judge, Kanpur. The grounds of appeal are that the trial court had erroneously treated the plaintiff superior to an Instrument Mechanic and it misinterpreted the option exercised by the plaintiff in May, 1973 and it failed to appreciate that while revising the pay scales on 1.3.77 the revised pay scales of Precision Mechanic was allowed only to those persons who held the post prior to 31.12.72 and it failed to appreciate that this was a reasonable classification. The defendant-appellants have therefore challenged the findings of the trial court which entitled the plaintiff-respondent to the revised pay scale w.e.f. 1.3.77 and also

which entitled him to be considered for automatic promotion and have prayed that the said judgement and decree be set aside.

2. The plaintiff-respondent's case is that he was appointed as a Instrument Mechanic on 8.9.69 in the scale Rs. 150 - 240. He was redesignated as a Precision Mechanic on 1.6.74 in the scale Rs. 380 - 560 which was the scale recommended by the Third Pay Commission for the post of Instrument Mechanic as well as Precision Mechanic. According to the plaintiff-respondent there were two other Precision Mechanics viz. Prem Pratap Singh and Shri Anand Luther who were at par with the plaintiff-respondent but were given a pay scale of Rs. 425 - 700 without changing their designation w.e.f. 1.3.77 by an order from the Ministry of Defence dated 13.4.1981. These two persons were subsequently promoted to the post of Chargeman grade I in the pay scale of Rs. 550-750 on the merit-cum-seniority basis without being subjected to a trade test and on the basis of Special Annual Confidential Report as per Ministry of Defence letter of 19.8.1982. The plaintiff respondent has alleged that he was also asked to fill up the Annual Confidential Report but before this could be done the practice was amended. He has therefore claimed that he is also entitled to the pay scale of Rs. 425-700 w.e.f. 1.3.77 and the fixation or creation of two groups of pay scales viz. Rs. 380 - 560 and Rs. 425 - 700

is discriminatory and against principles of equality. Due to the creation of these two separate grades he has been asked to appear for trade test for promotion to the post of Chargeman grade II whereas other two colleagues were not required to appear in the trade test and were automatically promoted from Precision Mechanic to the post of Chargeman grade I. Therefore he has been made to cross one more channel before he could become Chargeman grade I which is Chargeman grade II. According to him the creation of two scales of pay contravenes the provisions of Article 16(1) and (2) of the Constitution and is therefore illegal and discriminatory. He therefore prayed for a relief that he is entitled to be granted the revised scale of Precision Mechanic of Rs. 425 - 700 w.e.f. 1.3.77 with other allowances and consequently an automatic promotion to the post of Chargeman grade I in the scale of Rs. 550 - 750 and the defendants be directed to promote him to the scale Rs. 425 - 700 and Rs.550-750.

3. In the Trial Court the plaintiff respondent's application was opposed by the defendants-appellants on the ground that at the time of redesignation of the plaintiff-respondent to the post of Precision Mechanic from the post of Instrument Mechanic the two posts carried the same pay scale of Rs. 380-560 and therefore the redesignation did not make the plaintiff-respondent superior to an Instrument Mechanic. They denied the

allegation that the other two colleagues of the plaintiff respondent were at par with him. ²Those two persons were already Precision Mechanics in the grade Rs. ^{34/ 205 - 290} ~~200 - 500~~ prior to the crucial date of 1.3.1977 from which date the Third Pay Commission's recommendations came to be implemented. According to them these two persons became entitled to scale of Rs. 425 - 700 in pursuance of the Govt. of India letter of 13.4.1981 and since the plaintiff respondent became a Precision Mechanic only on 1.6.74 he was not entitled to the benefit given to the two other Precision Mechanics. The grade of Rs. 425-700 was allowed as personal to only such of those Precision Mechanics who were already serving as such on 31.12.72. According to the defendant appellants there has been no arbitrary, illegal and discriminatory action and there has been no contravention of Article 16(1) and (2) of the Constitution. According to the Govt. of India's letter dated 19.8.82 Precision Mechanics were classified as Tradesman 'A' and could be considered eligible for promotion to the post of Chargeman grade II but the plaintiff respondent did not appear in the test held on 10.2.83.

4. The learned Trial Court had framed five issues. On Issue No.3 i.e. whether the fixation of different scales of pay for the post of Precision Mechanic was arbitrary, illegal and discriminatory as alleged in para 8 of the plaint. The learned

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Trial Court had concluded that from 1974 to 1981 the plaintiff respondent alongwith other Precision Mechanics was working on a post carrying similar pay scales. But in 1981 the plaintiff respondent was denied the pay scales in accordance with the Third Pay Commission's recommendations on the plea that he was promoted after 1972. The learned Trial Court had further observed that in the Third Pay Commissions recommendations the Precision Mechanics grade was not recommended to be divided in two separate pay groups and such a division is against the principles laid down in Articles 14 and 16 of the Constitution of India and therefore the classification made was not based on sound principles and therefore the Trial Court decided the issue in favour of the plaintiff respondent. On Issues No.1 & 5 which were whether the plaintiff respondent is entitled to revised scale of pay of Precision Mechanic w.e.f. 1.3.1977 and to what relief he is entitled to? The learned Trial Court had held that since the Third Pay Commission had not recommended two separate pay scales for the Precision Mechanics and the plaintiff respondent and others were confirmed together as Precision Mechanics, The fixation of separate pay scales was illegal and in violation of Articles 14 and 16 of the Constitution and therefore the plaintiff respondent was entitled to the relief of higher grade of Rs. 425 - 700 w.e.f. 1.3.77 and also promotion as Chargeman grade I without

trade test. The present appeal arises out of this judgement of the Trial Court.

5. To be able to understand and appreciate the point raised by the plaintiff respondent it is necessary to analyse the situation as it existed prior to the introduction of the recommendation of the Third Pay Commission and after the implementation of their recommendation later on. The defendant appellants have filed an affidavit, On 24.7.87, which gives a clarification through a memo dated 4.2.85 to which is ^{is attached} ~~being placed~~ at Appendix 'A' and the second clarification dated 9.8.85 which is placed at Annexure-2 of the same affidavit. The letter of 9.8.85 gives the position. It clarifies that prior to 1.1.73 the Precision Mechanics and Supervisor Technical grade II were in a common pay scale of Rs. 205 - 280. Both these grades were feeder grades for promotion to the grade of Chargeman grade II. The Third Pay Commission did not specifically consider the case of the pay scales of Precision Mechanics. In respect of industrial staff they considered categories only upto the pay scale of Rs. 205 - 240. But while making a recommendation regarding the pay scales of supervisory staff the Pay Commission recommended that the persons in the pay scale of Rs. 205 - 280 should be given the pay scale of Rs. 380 - 560. On this analogy the Govt. gave the scale of Rs. 380-560 to the Precision Mechanics. As far as Supervisor Technical grade II was concerned they were given the

scale of Rs. 425 - 700 and were ~~assimilated~~^{regraded} as Chargeman grade II. As mentioned above the Precision Mechanics alongwith the Supervisor Technical grade II were the feeder grades for promotion to the grade of Chargeman grade II prior to 1.1.73. By this different equation made by the Pay Commission the Precision Mechanics ^{who} were at par with Supervisor Technical grade II got affected. It was to remove this anomaly that the Govt. equated the Precision Mechanics who were originally at par with Supervisor Technical grade II for promotion and scale of pay to the Supervisor Technical grade II and since Supervisors Technical grade II were now equivalent to Chargeman grade II the Precision Mechanics who were in position at that time and who were affected by the recommendation of the Pay Commission were also given the same benefits. It was only after 1.1.73 that the avenue of promotion of Precision Mechanics has been ~~changed~~^{changed} and they have now been bracketed with other industrial categories like Tradesman 'A' who are in the pay scale of Rs. 380 - 560. In the concluding para of this letter the Ministry of Defence have said as follows :-

" When any grade is merged with another grade for the purpose of promotion no ratio is ever fixed. Since there are now two distinct categories with a two different pay scales i.e. Precision Mechanics who were in position as on 31.12.72 and Precision Mechanics who were appointed on or after 1.1.73 their promotional avenues need not be the same. Naturally they are governed with the different set of rules for further promotion."

6. In Appendix 'A' of the letter of 4.2.1985 which is also attached to the affidavit filed on 27.4.87 by the defendant appellants the anomaly has been explained. As already mentioned in the para supra the Supervisor Technical grade II were fixed in a higher grade by the recommendations of the Third Pay Commission. This note explains that some of the Precision Mechanics who were senior to the Supervisor Technical grade II but who chose to be Precision Mechanics and not Supervisor Technical grade II - both being in identical grades prior to 1.1.73 - were drawing lesser pay than the Supervisor Technical grade II their erstwhile colleagues who were junior to them ³¹ but ~~who~~ were granted the pay scale of Rs. 425 - 700. To avoid this anomaly a recommendation was made to allow the scale of Rs. 425 - 700 at par with Supervisor Technical grade II to all those Precision Mechanics who were in position on 31.12.72. The proposal was confined only to the upgradation of the pay scale ³¹ on personal basis of a limited number of persons who held the post of Precision Mechanic on 31.12.72 and who were still in that grade and whose total number was 138. This note further said that the Precision Mechanics appointed after 31.12.72 ³¹ ~~as~~ ^{or} either direct recruits or promotees from industrial grade II categories i.e. Rs. 330 - 400 ³¹ ~~and they~~ cannot be treated at par with the Precision Mechanics who were already in position on 31.12.72.

The Govt. agreed to the revision of the pay scales of such of those Precision Mechanics who were working as such prior to 31.12.72. To provide matching savings they further surrendered 33 vacant posts of Precision Mechanics.

3/ 7. The above paras elaborate the circumstances under which the Govt. issued an order to protect the interest of such of those Precision Mechanics who were originally at par with the Technical Supervisors grade II and who found themselves suddenly treated differently as a result of equation of the post of Supervisor Technical grade II to that of the Chargeman grade II in the pay scale of Rs. 425 - 700 from the grade Rs. 205 - 280 while they themselves got only the grade Rs. 380 - 560. This grade was not recommended by the Pay Commission but was fixed by the Government as the Third Pay Commission had not specifically considered the pay scales of Precision Mechanics. These Precision Mechanics were therefore ^{at} ~~had~~ a disadvantage and to guard their interest and to remove the anomaly created by the introduction of the new equation for Technical Supervisor grade II ignoring the Precision Mechanics who were similarly placed at the particular time the Govt. took a corrective action in 1981.

8. The main issue raised at the bar was that there has been discrimination in the category of

Precision Mechanics and the plaintiff respondent has been subjected to this discrimination by the Govt. denying to give him the same scales of pay and facilities for further promotion as it granted to the other Precision Mechanics specially two of his colleagues who were in the same Shop. The learned counsel for the plaintiff respondent contended that except for the fact that a cut off date was fixed by the defendant appellants, there is no other explanation for the denial of the same privileges to the plaintiff respondent. To support his case he had relied on a number of decisions. Some of these have already been dealt with by the Trial Court and have been quoted in the judgement. According to him the classification made was not on sound basis and was in contravention of Articles 14 and 16 of the Constitution and therefore the plaintiff appellant could not be denied the same scale of pay as well as promotional opportunities and therefore his special Confidential Report should also be called and he should also be considered for promotion to the grade of Chargeman grade I as in the case of other Precision Mechanics. The learned counsel for the defendant appellants however maintained that there is no wrong classification and since the plaintiff respondent became a Precision Mechanic on 1.6.74 by which time the Precision Mechanics were equated to Tradesman grade 'A', no prejudice has been caused and there is no mala fide in the orders and therefore the plaintiff

respondent has no case.

9. We will now deal with the Supreme Court Judgement and a judgement of the Principal Bench of this Tribunal which have been cited by the learned counsel for the plaintiff respondent. In AIR 1985 SC 1124 P.Savita and Others Versus Union of India & Others the Hon'ble Supreme Court had reversed the judgement of the Madhya Pradesh High Court in Misc. Petition No. 408 of 1978 and observed as follows :

" Where all relevant considerations ² ~~are~~ are the same, persons holding identical posts and discharging similar duties should not be treated differently.

Where the third Pay Commission classified the Senior Draughtsman in the Ministry of Defence Production in two groups and recommended higher pay scale for one group not on any merit-cum-seniority basis, but only on seniority-cum-fitness basis and there was no denial anywhere that both these types of Draughtsman did the same work and discharged the same functions and duties, the grouping violated Article 14."

In this particular case there were two categories of Drawing Office staff:- Senior Draughtsman and Draughtsman. Senior Draughtsman were either directly recruited or promoted from the post of Draughtsman. At ³ ~~all~~ ^{the} relevant time all the senior Draughtsman were drawing the same pay scale. The First and Second Pay Commission also recommended same scales of pay for all

senior draughtsman. Third Pay Commission recommended that the Draughtsmen were to be in the scale of Rs.330 - 560 while the senior draughtsmen were divided into two groups with scales of pay Rs. 330 - 560 and Rs.425 - 700. It was this division that was under challenge. Representations were made by the petitioners against this grouping and they had pleaded that there should not be any discrimination in the pay scales of senior draughtsman as was recommended by the Third Pay Commission. Their case before the High Court was that senior draughtsman discharged identical duties and performed similar work that being so there was little or no justification in putting 50% of them in higher scale of pay and the remaining 50% in the lower scale of pay which grouping was without any intelligible differentia. The Hon'ble Supreme Court had in this case observed in para 11 as follows :-

" It has to be borne in mind that this differentiation is not based on any intelligible ground. The group of Draughtsmen entitled to the higher scale of pay, is not selected by any process nor is it based on any merit-cum-seniority basis, but is based only on seniority-cum-fitness. There is no denial anywhere that both these types of Draughtsmen do the same work and discharge the same functions and duties. According to the recommendations of the Third Pay Commission, a Draughtsman has to get Rs.330-10-380-EB-12-500-EB-15-560, while Senior Draughtsman, like the appellants, who have become so on promotion, will continue to get the same scale of pay and not the higher scale of pay. In other words, the promoted persons like the appellants, are without any monetary

benefit to them. The pay that they would get as Senior Draughtsman, would be the same as a Draughtsman would get under the Third Pay Commission. That is for the same work and same functions, the appellants would get less pay than the other group of Senior Draughtsmen. The explanation is that this division is based on seniority. This cannot be accepted as sufficient to meet the requirements of law. By seniority a Senior Draughtsman will get higher pay with the increments that he earns proportionate to the number of years he is in service. Here that is not the case. It is the classification of the Senior Draughtsman into two groups, that is responsible for the higher pay. 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."

In AIR 1982 SC 879 Randhir Singh Versus Union of India the Hon'ble Supreme Court evolved the equality doctrine embodied under Article 39(d) and read Article 14 into it. In this case they have considered a complaint of a Driver who was originally in the Army but later employed by the Delhi Police Force and was denied the same pay as was available to other Drivers in the service of Delhi Administration. The Hon'ble Supreme

had allowed the writ petition and directed the concerned authorities to pay the petitioner salary atleast equal to the Drivers of the Railway Protection Force. While disagreeing the plea put forward by the Union of India the Hon'ble Supreme Court had made the following observations :-

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" The counter-affidavit does not explain how the case of the drivers in the police force is different from that of the drivers in other departments and what special factors weighed in fixing a lower scale of pay for them. Apparently in the view of the respondents, the circumstance that persons belong to different departments of the Government is itself a sufficient circumstance to justify different scales of pay irrespective of the identity of their powers, duties and responsibilities. We cannot accept this view. If this view is to be stretched to its logical conclusion, the scales of pay of officers of the same rank in the Government of India may vary from department to department notwithstanding that their powers, duties and responsibilities are identical. We concede that equation of posts and equation of pay are matters, primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts ~~concerned~~ ~~concerned~~ but we must hasten to say that where all things are equal, that is where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar

functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same."

10. In ATR 1986 (2) CAT 79 P.K.Taneja and others Versus Union of India & Another the Principal Bench of this Tribunal had dealt with the question of classification of senior draughtsmen in Central Water and Power Commission doing same duties and discharging the same functions into two groups of higher scale of pay based on seniority-cum-fitness and had held that the classification was arbitrary and unsustainable. In this case the petitioners were initially appointed as Junior Draughtsmen in the pay scale of Rs. 150 - 240 and the pay scale of the Senior Draughtsman at that time was Rs. 205 - 280. They were promoted as senior draughtsmen prior to 1974. On the recommendations of the Third Pay Commission the pay scales of Junior Draughtsmen were revised from Rs. 150 - 240 to Rs. 330 - 560 and that of Senior Draughtsmen from Rs. 205 - 280 to partly Rs. 330 - 560 and partly to Rs. 425 - 700. It was this action of the respondents that was impugned in this petition as violative of the fundamental rights guaranteed under Article 16 and 14 of the Constitution.

11. The basic facts of the above cited cases are not on all ^{ways} ~~force~~ with the present case. In the

above cases a particular grade was divided into two separate pay scales and therefore it was held that if the persons were doing the same type of work the classification was not based on intelligible criteria and therefore violated Articles 14 and 16 of the Constitution. In the present case the scale of Precision Mechanic has not been divided into two separate groups. There is only one scale of pay and i.e. Rs. 380 - 560. The Precision Mechanics originally worked in the grade Rs. 205 - 280 and the Govt. allotted the new scale of pay of Rs. 380-560 to them. No order has been put before us to show that two different scales of pay have been allotted by the Govt. to the category of Precision Mechanics. In the present case it was an anomaly which was created by the allotment of the grade Rs. 425 - 700 to the Supervisors Technical grade II who were, prior to 1.1.73, at par with the Precision Mechanics i.e. in the same grade of Rs. 205 - 280 and therefore belonged to the same class in respect of pay as the Precision Mechanics at that time. With the ~~upgradation~~ upgradation of the post of Supervisor Technical grade II to Rs. 425 - 700 consequent to the recommendations of the Third Pay Commission on allotment of the grade of Rs. 380 - 560 to the Precision Mechanics by the Govt. and equating them to industrial category grade 'A' the persons who were at par with the Supervisors Technical grade II had suffered and to rectify the disadvantage which resulted to them the Govt. decided to protect their interest by giving them a pay personal

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to them of Rs. 425 - 700 and facilities as were afforded to the Technical Supervisors grade II. This was not a question of creation of two separate grades of posts in the same category. This was an exercise done to protect the interest of some of the employees who were adversely affected as a result of implementation of certain recommendations. No separate classification has been made and the " principle of reasonableness which legally as well as philosophically is an essential element of equality or non arbitrariness and pervades Article 14 like a brooding omini presence" has²⁴ not been hit.

12. In conclusion therefore we find that the decree and judgement passed by the learned Trial Court in Suit No.238 of 1983~~are~~ liable to be set aside. We accordingly allow the appeal and dismiss the suit No. 238 of 1983. Parties will bear their own costs.

अजय जौहरी

Member (A)

[Signature]

Member (J)

Dated the 16th July, 1987

RKM