

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 2nd day of May 2002.

Original Application no. 340 of 1994.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Member (A)

1. O.P. Mourya, S/o Sri R.L. Maurya,
Wireman (skilled), Opto Electronics Factory,
Raipur, Dehradun.
2. Sanjay Kumar Sharma, S/o Sri G. Sharma,
Wireman (skilled), Opto Electronics
Factory, Raipur, Dehradun.
3. Chander Shekhar Dimri, S/o Sri S.N. Dimri,
Wireman (skilled), Opto Electronic Factory,
Raipur, Dehradun.
4. K.S. Bisht, S/o Sri C.S. Bisht, Wireman (skilled)
Opto Electronics Factory, Raipur, Dehradun.
5. Tajender Singh, S/o Sri K Singh, Wireman (skilled),
Opto Electronics Factory, Raipur, Dehradun.
6. Ramesh Chander, S/o Sri T.K. Uniyal,
Wireman (skilled), Opto Electronics Factory,
Raipur, Behradun.
7. Naresh Giri, S/o Sri J Giri, Wireman (skilled),
Opto Electronics Factory, Raipur, Dehradun.
8. Vinod Kumar Verma, S/o Sri K.P. Verma,
Wireman (skilled), Opto Electronics Factory,
Raipur, Dehradun.
9. A.K. Sethi, S/o Sri J.P. Sethi, Wireman (skilled),
Opto Electronics Factory, Raipur,
Dehradun.
10. Ahmad Hussain, S/o Sri B. Ahmad,
Wireman (skilled), Opto Electronics Factory,
Raipur Dehradun.
11. Balvinder Singh, S/o Late P. Singh, Wireman

(skilled), Opto Electronics Factory, Raipur, Dehradun.

12. Nand Kishore Sharma, S/o Sri D.R. Sharma, Wireman (skilled) Opto Electronics Factory, Raipur, Dehradun.
13. Narendra Kumar, S/o Sri Ganga Ram Singh, Wireman (skilled), Opto Electronics Factory, Raipur, Dehradun.
14. A.K. Sharma, S/o Sri R.B. Sharma, Wireman (skilled), Opto Electronics Factory, Raipur, Dehradun.
15. Sanjay Kumar Sharma, S/o Sri V.K. Sharma, Wireman (skilled), Opto Electronics Factory, Raipur, Dehradun.
16. R.K. Mourya, S/o Sri P.D. Maurya, Wireman (skilled) Opto Electronics Factory Raipur Dehradun.
17. ^{S/o} Pradeep Singh, Sri Gulab Singh, Wireman (skilled) Opto Electronics Factory, Raipur Dehradun.
18. Rajendra Singh, S/o Sri N. Singh, Wireman (skilled) Opto Electronics Factory, Raipur, Dehradun.
19. Arun Kumar, S/o Sri A.P. Kandwal, Wireman (skilled) Opto Electronics Factory, Raipur, Dehradun.
20. Rajesh Negi, S/o Sri O.S. Negi, Wireman (skilled) Opto Electronic Factory, Raipur, Dehradun.
21. V.K. Rana, S/o Sri P.S. Rana, Wireman (skilled), Opto Electronics Factory, Raipur, Dehradun.
22. R.P. Saklani, S/o Sri J.D. Saklani, Wireman (skilled), Opto, Electronics Factory, Raipur, Dehradun.
23. Rajendra Prasad, S/o Sri Y. Kishore, Wireman (skilled), Opto Electronic Factory, Raipur Dehradun
24. Raghbir Singh, S/o Sri Sant Ram, Wireman (skilled), Opto Electronics Factory, Raipur, Dehradun.
25. Mahendra Singh, S/o late Faquir Chand, Wireman (skilled) Opto Electronics Factory, Raipur, Dehradun.
26. C.P. Singh, S/o late Mohan Singh, Wireman (skilled), Opto Electronic Factory, Raipur, Dehradun.

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27. Manjeet Singh, S/o Sri Shyam Singh, Wireman (skilled), Opto Electronics Factory, Raipur, Dehradun.
28. Bijendra Singh, S/o Sri K Singh, Wireman (skilled), Opto Electronics Factory, Raipur, Dehradun.
29. Inderjeet Singh, S/o Sri S. Singh, Wireman (skilled), Opto Electronics Factory, Raipur, Dehradun.
30. Naresh Chand, S/o Sri Mam Chand, Wireman (skilled), Opto Electronic Factory, Raipur, Dehradun.
31. Tulsi Ram, S/o Sri Baldev Singh, Wireman (skilled), Opto Electronic Factory, Raipur, Dehradun.
32. Shiv Charan Singh, S/o Shri Baldev Singh, Wireman (skilled), Opto Electronic Factory, Raipur, Dehradun.
33. Amar Singh, S/o Sri Mukh Ram, Wireman (skilled), Opto Electronics Factory, Raipur Dehradun.

... Applicants

By Adv. Sri Y.K. Saxena

Versus

1. Union of India through its Secretary, Govt. of India, Ministry of Defence, New Delhi.
2. Director General of Ordnance Factories, Govt. of India, Ministry of Defence, Ordnance Factory, Board, 10-A, Auckland Road, Calcutta.
3. General Manager, Govt. of India, Ministry of Defence, Opto Electronics Factory, Raipur, Dehradun.

... Respondents

By Adv : Km Sadhana Srivastava

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA, filed under section 19 of A.T. Act, 1985, the applicant 33 in number have challenged the

impugned ^{4.} rejecting the representation dated 29.6.1993 and 23.8.1993 of applicants No 2
order dated 2.9.1993 (Ann A) ^{where} and prayed that the respondents be directed to promote them in high skilled grade II by holding trade test and respondent no. 3 be restrained from holding the competency test by accepting the diploma/Certificate of ITI/NCTVT certificate or the licence from the State Govt.. They have claimed initial promotion after completion of two years of service in semi skilled wireman/Electrician, promotion to the post of Skilled Wireman/Electrician after completion of 5 years of service from the date of their initial appointment and thereafter promotion to such skilled grade II after holding trade test after completing another three years from the date they are promoted as skilled Wireman/Electrician. Another prayer made by the applicants is that they should be granted equal pay for equal work in the pay scale of Rs. 950-1500 ^{from the date of} their initial appointment with arrears.

2. The facts, in short, giving rise to this OA are that the applicants were appointed as Wireman/Electrician/SB (Semi Skilled/Skilled/HS-2) and are presently working in Group 'C' cadre in opto Electronics factory, under Ministry of Defence, Dehradun. They were appointed at the starting pay of Rs. 800/- in scale of Rs. 800-1150 in the said factory. One gets skilled grade provided one ^{has} satisfied ^{the} condition of service as per recruitment rules and possesses High School with Diploma of ITI/NCVT or licence from the State Govt. Authority. The applicants ^{are} aggrieved because in other factories where the candidates are appointed in the said trades and possess academic qualifications, initial pay scale of Rs. 950-1500 is granted whereas in Opto Electronics Factory, Dehradun they have been placed in scale of Rs. 800-1150 though they possess the requisite educational qualification. Besides

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respondent no. 2 ie Ordnance Factory Board Calcutta have made a mandatory provision that one has to appear in competency test before one qualified to appear in Trade test. Applicants represented against this on 10.2.1993. They moved another representation on 29.6.1993 requesting that they should not be required to appear before the competency test for 1992-93 but their representation has been rejected. Hence this OA which has been contested by the respondents.

3. Heard Sri Y.K. Saxena, learned counsel for the applicant and Km. Sadhana Srivastava, learned counsel for the respondents and perused records.

4. Sri Y.K. Saxena learned counsel for the applicant submitted that the applicants have requisite diploma of ITI/ NCTVTC or possessing licences from the State Govt. and were appointed during 1987 in Opto Electronics Factory as Semi Skilled Wireman/SB (Group 'C' Cadre). As per service condition issued through SRO dated 28.7.1989 (Ann 1) the post upto Grade II are to be filled after holding the trade test and oral examination and for determining seniority the date of entry in the skilled grade is to be taken into account in respect of those possessing requisite qualification. Rule 3 of Indian Electricity Rules 1956 has laid down that no person shall be authorised to perform duty unless he possessed the appropriate certificate of competency. The minimum qualification for operating under supervisory staff shall preferably be high IIInd class diploma in Mechanical or Electrical Engineering or a degree from recognised institution or university. The minimum qualification to assist the operating and supervisory staff shall be certificate from a recognised ITI in appropriate trade. The DGOF competency test is not prescribed as the

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qualification for promotion and therefore competency test prescribed is against the Statutory provisions. In fact trade test itself is to test the competency of the candidate. The learned counsel submitted that the administrative instructions cannot supersede the statutory qualification prescribed under the rules. Therefore the DGOF competency test may be declared as void. Besides the competency test is for those candidates who are not having the ITI/NCVT and licence from the State Govt. authority.

5. Another submission made by Sri YK Saxena is that Ordnance Factory Board takes a long time to conduct competency test with the result the promotion is delayed sometimes by 4 or 5 years. The DGOF has not agreed to delegate the powers to General Manager Opto Electronics Factory to ^{hold competency test in order to} obviate delay. Thus competency test becomes a barrier in Career progression because one has to first ^{pass} competency test and only then he can appear in the trade test.

6. Learned counsel submitted that statutory rules framed under Indian Electricity Rules 1956 by conducting the trade test as permit to work are applicable in other organisations under Ministry of Defence like DRDO, MES, DG Quality assurance and Indian Ordnance Factory. These are also applicable in Department of Atomic Energy (Heavy Water plant and advance technology), National Aero space Laboratory and uranium corporation of India but in Opto Electronics Factory Dehradun, Ordnance Factory Board has illegally prescribed the competency test.

7. Sri Y.K. Saxena further submitted that the applicants are being discriminated against. The applicant working

as wireman semi skilled are drawing a pay scale of Rs. 800-1150 whereas people discharging identical duties are drawing pay scale of Rs. 950-1500. This Tribunal Hyderabad Bench by its order dated 23.6.1989 in OA no. 363 of 1988 and order dated 17.6.1991 in OA no. 87 of 1990 granted relief to the aggrieved applicants by invoking the principle of equal pay for equal work relying upon the decision of Hon'ble Supreme Court in Bhagwan Sahai case. The Hon'ble Supreme Court in Bhagwan Sahai Vs. Union of India & Others AIR 1989 SC 1215 has laid down that the individuals performing identical duties be provided higher scale granted to employees of some trades in one grade w.e.f. their date of joining.

8. Sri Y.K. Saxena finally submitted that DGOF Board prescribing competency test before Trade Test is nothing but alteration in the condition of service, which is illegal. The learned counsel has placed reliance on the decision of Hon'ble Supreme Court in State of Punjab Vs. Madan Singh AIR 1972 SC 1429 laying down that there cannot be any alteration in the condition of service by prescribing test for promotion. Sri Y.K. Saxena, also cited the decision of Hon'ble Supreme Court in Govind Prasad Vs. RG Prasad 1993 JT (6) SC 233 holding that executive instructions could not reduce the eligibility criteria prescribed under statutory rules and such instructions are not binding for depriving a person eligible for promotion. In support of his arguments the learned counsel also cited judgments of Hon'ble Supreme Court in Ajit Singh & Ors Vs. The State of Punjab & Ors (2000) 1 UPLBEC 195 (Constitutional Bench decision), Hari Dutt Keinthan Vs. State of Himachal Pradesh AIR 1980 SC 1426 and Raghunath Prasad Vs. Secretary Home Police Department State of Bihar AIR 1988 SC 1033.

9. Resisting the claim of the applicants Km. Sadhana Srivastava, learned counsel for the respondents submitted that Ordnance Factory Board is competent authority to issue instructions for competency test in electrical trade. Wherever required. None of the applicants has been appointed directly in the semi skilled grade of Electrician trade as such a post does not exist in Electrician grade and the applicants were originally appointed in the semi skilled grade of wireman trade scale of Rs. 800-1150. All the applicants after passing the prescribed Trade test of skilled grade were promoted to skilled grade wireman as per the recommendation of DPC. Learned counsel for the respondents submitted that Electrician Trade carry better promotional avenues and higher grades in comparison to wireman trade. Therefore, for change of trade applications are invited from eligible skilled wireman to appear at DGOF competency test for their induction in Electrician skilled trade scale of Rs. 950-1500. Those who successfully pass the competency test of Eletrician skilled grade are inducted within a period of 6 months. The instructions dated 30.5.1988 (Ann A-3) for conducting competency test are consistent in terms of the provisions made under note 6 and 10 of schedule of SRO and therefore correct and legal. All the applicants appeared in the competency test in the post and failed. Being afraid of failing again they have filed this OA challenging the validity of competency test.

10. Km. Sadhana Srivastava, submitted that out of 33 applicants, 12 applicants have already been promoted from Wireman Skilled grade to Electrician Highly Skilled grade II after passing competency test, 11 applicants have been inducted to that of Electrician Skilled after passing competency test and have been upgraded to next higher grade ie Electrician Highly Skilled Grade II, 3 applicants have been given benefit of

financial upgradation to the next higher post of Wireman Highly Skilled Grade II under the provisions of ACP scheme ^{7 applicants have also been converted from Wiremen skilled to Electrician in} and remaining skilled after passing the competency test.

11. Km. Sadhana Srivastava, learned counsel for the respondents further submitted that in Ordnance Factories Organisation the pay scale of various posts has been fixed on the recommendation of Expert Classification Committee (in short ECC). The ECC under Ministry of Defence has adopted system of point rating for the purpose of job evaluation of each trade. Therefore, the principle of equal pay for equal work cannot be pressed into service as ^{each} such trade is crucial with regard to responsibility ^{and} duties. The learned counsel in support of her argument has placed reliance on the judgment dated 13.12.1993 of Hon'ble Supreme Court in SLP CA no. 3999 and 4024 of 1988 upholding the decision of this Tribunal Calcutta Bench dismissing OA no. 1380 of 1993 in case of Switch Board Attendants working in Metal and Steel Factory Ishapore. The learned counsel for the applicants also mentioned that the Hon'ble Supreme Court has taken similar view in Harbans Lal & others Vs. The State of HP & Ors, JT 1989 (3) SC 296 and JP Chourasia and others AIR 1989 SC 19.

12. Km. Sadhana Srivastava, finally submitted that competency test is not a ^{new} introduction. It is applicable in every factory under ordnance Factories Board ^{in which are} about 40 in number. Even in 1982 the competency test was in existence for Electrical Trades whereas the applicants have been recruited only in 1987.

13. We have carefully considered the submissions of

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learned counsel for the parties and have closely perused records. The main controversy in this OA are two fold :

- i. Whether holding of competency test in respect of those candidates who are ^{possessing} ~~passing~~ diploma of ITI/ NCVT or the licence from State Government authority ^{legal} is valid or not, and
- ii. applicability of principle of grant of equal pay for equal work in respect of applicants.

14. As regards the validity of competency test we have perused SRO (Ann A-1 and A-2) covering the service conditions and recruitment rules for various Trades/Grades. We would like to quote note 6 of Schedule of SRO which reads as under :

"NOTE-6

Wherever 'TRADE TEST' is laid down in column 12 of this schedule such trade test shall be prescribed by the General Manager of the Factory or the Ordnance Factory Board. The term 'Trade Test' will include written, oral and practical examination and aptitude test and interview and also statutory qualification test where applicable."

From the perusal of note 6 there appears no illegality in the instructions dated 30.5.1988 issued by respondent no. 2 for conducting competency test. In fact the competency test is in respect of those who are ^{desirous} of change from wireman trade to Electrician trade for career progression, and respondents are well within legal rights to conduct such test so that they get better ^{talent} for Electrician trade having better future prospects. We do not find force in the submission of learned counsel for the applicant that the competency test should not be conducted for those who possess

Diploma of ITI/NCTVT or the licence from the State Govt. authority. The competency test has been in vogue even in 1982 as is apparent from perusal of CA 3 ie letter no. 2206/5/A/A(iv) (Pt) dated 22.9.1982 issued by Ordnance Factory Board Kolkata regarding competency test in Electrical Trades. Not only this, competency test is being held in other factories under Ordnance Board. Therefore, the action of respondents in no way suffers from ^{any} error of law. It would be incorrect to plead that service conditions have been altered because of the competency test. The case laws cited by the learned counsel for the applicants are easily distinguishable and will not be of much help.

15. The next point to be addressed is whether the principle of grant of equal pay for equal work is applicable in respect of applicants who were appointed as Semi Skilled wiremen in scale of Rs. 800-1150 though they possessed the requisite qualification to be granted scale of Rs. 950-1500. In Ordnance Factories organisation, there are employees in different Trades and grades and the Pay scales attached thereto have been fixed on the recommendations of Expert Classification Committee under Ministry of Defence which went into job evaluation of each Trade. Here we would like to quota the relevant observation of Hon'ble Supreme Court in Harbans Lal case (supra):-

"....In the first place, even assuming that the petitioner's jobs are comparable with the counter-parts in the Government Service, the petitioners cannot enforce the right to 'equal pay for equal work'. A comparision cannot be made with counter-parts in others establishments with different management or even in establishments indifferent Geogra-

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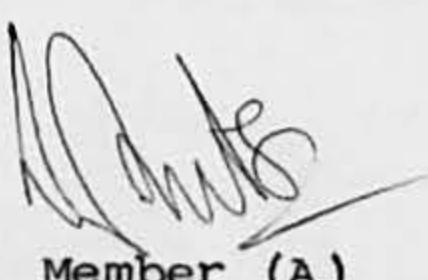
physical location though owned by the same master. Unless it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principle of 'equal pay for equal work' cannot be enforced."

The Hon'ble Supreme Court in JP Chaurasia's case (supra) has held that the quantity of work may be the same but quality may be different, that cannot be determined by relying upon averments in the affidavits of the interested parties.

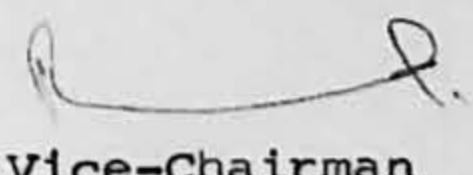
The equation of posts or equation of pay must be left to the executive government. It must be determined by the expert bodies like Pay Commission and the Courts should not try to tinker with such equivalence unless it is shown that it was made with entraneous consideration. In the present case, the scales have been implemented by the Government on recommendation of ^{the} E.C.C. and in the light of judgments of Hon'ble Supreme Court in cases of Harban's lal (supra) and J.P. Chaurasia (supra) the applicants cannot claim parity with the pay scales of other organisations.

16. In view of the aforesaid discussions we find no good ground for intervention. The action of the respondents is correct and legal and the impugned order dated 2.9.1993 (Ann A) does not suffer from any error of law. Accordingly the OA is dismissed being devoid of merits.

17. There shall be no order as to costs.



Member (A)



Vice-Chairman

Dated 102/05/ 2002

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