

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
NO. 104 OF 1988

O.A. No. 104 of 1988
XXXXXX

DATE OF DECISION 23.4.1991

Mr. Pravinkumar Bachubhai Patel Petitioner

Mr. J. J. Yagnik Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. P. M. Raval Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi Vice Chairman

The Hon'ble Mr. Santhana Krishnan Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Y*

Pravinkumar Bachubhai Patel,
194-1235, Bapunagar,
AHMEDABAD.

.... Applicant

Versus

1. Union of India, through
Secretary,
Ministry of Post,
Dak Bhavan,
NEW DELHI.

2. The Post Master General,
Gujarat Circle,
Ashram Road,
AHMEDABAD-9.

3. The Superintending Engineer,
(Postal Civil Circles)
having his office at Naranpura
Post Office, Naranpura,
AHMEDABAD.

.... Respondents.

Judgement cited :

1. Delhi High Court,
Shri I.M. Lall vs. The Union of India through Ministry
of Home Affairs, New Delhi and another, 1970 SIR
pg. 257, para - 34.

2. Punjab and Haryana High Court,
Ajit Singh Brar, Surveyor, Divisional Forest Officer,
vs. The State of Haryana and others, 1976 (1) pg. 746.
(Head Note)

Constitution of India, Article 311- Reduction in Pay
Scales with retrospective effect- Whether amounts to
reduction in rank and evil consequences (yes).

3. Harban Singh and another vs. The District Education
Officer, Ludhiana and others, 1980 (1) SIR, pg. 639.

4. The State of Uttar Pradesh and another vs. Shri C.S. Sharma
1967 (1) SIR pg. 583.

5. V.P. Gautama I.A.S. (Retired) vs. Union of India and
ors. 1983 (2) SIR, pg. 347.

6. D.S. Nakara and others vs. Union of India, 1983, A.I.R.
pg. 130 S.C.

7. Punjab and Haryana High Court,
Bhagat Ram Sharma vs. Union of India and others, 1985
(1) SIR pg. 481.

8. R.K. Singh vs. Union of India and others, 1984 (2) SIR,
pg. 491.

9. Natverlal Prabhashankar Trivedi and another vs. Secretary
to Govt. of Gujarat, Education and Labour Dept. and ors.
1976 (2) pg. 705.

J U D G E M E N T

(D)

Date : 23rd April '91

Per : Hon'ble Mr. P.H. Trivedi Vice Chairman

In this case, the applicant under Section 19 of the Administrative Tribunals Act 1985, has challenged the order dated 8.1.1988 passed by respondent No. 3 and the action on the part of the respondent in not giving equal pay for equal work to the applicant. By the said order the applicant claims to have been reverted from the pay scale of Rs.425-700 to that of Rs.300-560. He styles this action as arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution, and vitiated due to breach of natural justice. He states that no opportunity of hearing was given to him before the said order which caused him financial loss or evil consequence and therefore that it is bad. He further contend that persons discharging the same duties and responsibilities as draftsman are allowed higher pay scale while the applicant is allowed lower pay scale and therefore Article 39 (1) (D) of the constitution has been breached.

2. The applicant was appointed as draftsman with effect from 28.12.1982, and by order dated 13.1.1986 annexed with the petition his pay scale was fixed at Rs.425-700. However, by Office Memorandum dated 8.1.1988 the applicant was reduced to the pay scale of Rs.330-560. This O.A. is annexed at A3. The case of the applicant is that all

(D)

draftsman who discharge the same duties and responsibility are granted different pay scale on the cut-off dated 13.5.1982 as adopted by the respondent and the action regarding the applicant is arbitrary and discriminatory. The applicant also is aggrieved by the order dated 12.5.1988 by which the respondents have decided to recover from him the amount earlier paid on the ground that as it causes evil consequences and financial loss as it was necessary for the respondent to give an opportunity to the applicant to represent against it and only after considering his representation such an order should have been passed.

3. The respondents contend in their reply that the applicant has not exhausted his departmental remedies, and under Section 20 of the Administrative Tribunals Act 1985, the petition is not maintainable. They have also disputed that the petition is filed within the period of limitation. During the hearing these pleas were not seriously pressed. The petition is dated January 21, 1989 and there can be no justification for pleading limitation. Similarly from the reply of the respondents it seems that the impugned orders are not by way of penalty and therefore Section 20 of the Administrative Tribunals Act is not attracted.

4. The reply of respondents mainly relates to the circumstances in which the impugned orders have been brought about, Annexure R-2 dated 12th September, 1984 states

(To)

that following arbitration award the pay scale allowed to draftsman in P & T (Civil Wing) is revised to provide similar pay scale to draftsman with similar recruitment and qualification in C.P.W.D. and that the benefit of the revision of the pay scale would be applicable only to the draftsmen of P & T (Civil Wing) who were in service on 13.5.1982. In the decision of the Single Judge of the Delhi High Court the revision was made with effect from 22.3.1973. The judgement of the Single Judge dated 11.1.1990 applies the principle of 'Equal pay for equal Work' for disposing of the representation of the draftsmen of the Telecommunication Department for giving the same pay as of the draftsmen of C.P.W.D. Learned Advocate for the applicant has set several judgement to show that when draftsmen are doing the same work and performing the same duty there should be no discrimination on the basis of their pay. It does not appear that the respondents have offended it if The equality of pay follows the equality of qualification and of experience and of the nature of the duties. In allowing the benefit of revision of pay scales to draftsmen with effect from a certain date weightage has been given to experience of a certain number of years. Giving such weightage for arriving at a yardstick of the years for a class of draftsman does not constitute arbitrariness or discrimination because the qualification adopted is intelligible and uniform within the class, and related to the objective of classification by which criteria it

can be regarded as reasonable. Being reasonable it is a legal and valid basis and not offending Article 14 and 16 of the constitution, and for that reason also not offending Article 39 (1) of the Constitution.

5. The applicant is on stronger ground on the plea that the order of reverting should not have been passed without giving him an opportunity to make a representation and that his representation should have been considered before reverting as the effect of impugned order causes him financial loss. There is no doubt that it involves evil consequence. There is not doubt also that the orders giving the applicant a higher pay scale before the impugned orders were passed were duly made by the respondent. Only as a result of the award and the resultant revision of the pay scale of draftsman of C.P.W.D. the revision in the pay scale of draftsmen of P & T(Civil Wing) has been brought about. That being the case there is no error that the respondent committed in fixing the pay scale of the applicant earlier in the scale of 425-700 and therefore that plea is not helpful to them in justifying their correction of it by fixing a lower pay scale.

6. Even if the respondents desire to correct the error they are not justified in doing so without giving an opportunity to the applicant to be heard. The cases cited by the applicant and in pleadings bring out the

case law on the subject and we would not burden the record by any further analysis of the principles of natural justice.

7. For the above reason we find that the impugned orders are violative of the principle of natural justice but are not a breach of Article 14, 16 or 39 (1) of the constitution or offending the principle of 'Equal pay for Equal Work', The respondent are at liberty to pass the orders for fixing the applicant in a lower pay scale and after giving him an opportunity of representing against such orders. As a result the impugned orders are quashed and set aside. The ^{Appeal} ~~appeal~~ is found to have merit to the extents stated. Recovery if any made should be refunded to the applicant within 4 months of the date of this order. There shall be no order as to cost.


(S. SANTHANA KRISHNAN)
Judicial Member


(P.H. TRIVEDI)
Vice Chairman