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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 530 of 1991

Date of Decision: 6.7.1994.

H.K. Rath

Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.

1.34 J. L. M.
MEMBER (ADMINISTRATIVE)

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Respondents

For the applicant

Mr. J. K. Mishra,
Advocate

For the respondents

Mr. Ashok Mohanty
Standing Counsel (Central)

C O R A M:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR. H. RAJENDRA PRASAD, MEMBER (ADMN): Shri H.K.Rath, the applicant, has been working as Junior Engineer in the Labour Welfare Organisation (L.W.O.) since 1977. He was placed in the scale of Rs.425-700 as recommended by the Third Pay Commission. The scale was recommended to be revised to Rs.1400-2300 by the Fourth Pay Commission. He was duly given this revised scale too. Subsequently, the Government prescribed a further revision in respect of JEs in C.P.W.D. who had completed five years (Rs.1640-2900) and fifteen years (Rs.2000-3500) of service. These two scales were made effective from 1.1.1986 and 1.1.1991, respectively. He had already completed 5 years much before 1.1.1986 and also 15 years of service in August, 1992. He, therefore, represented to the authorities to give him the benefit of the two last-cited scales. His representation was turned down on the ground that the scales were applicable only to JEs of CPWD and not to those of Labour Welfare Organisation. Hence this application.

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2. The applicant prays for a direction to the Respondents to allow him the scales of pay he claims he is entitled to at the end of 5 and 15 years of service, from 1.1.1986 and 1.8.1992, respectively.

His prayer is based on the following grounds:

- 1) The Pay Rules of 1986, based on the recommendations of the 4th Pay Commission (and their acceptance by the Government) are framed under Article 309 and are, therefore, mandatory.
- 2) The pay-scales, duties, responsibilities and the qualifications of JEs in the respondents' organisation are analogous to those in CPWD, and have always been identical in the past.
- 3) The denial of the due time-bound revised pay-scales is arbitrary and discriminatory and against the concept of Equal Pay for Equal Work.
- 4) When the revised pay-scales, as recommended by the Fourth Pay Commission, were accepted for implementation by the Respondents, they cannot go back on a part of the package by withholding or denying the pay-scales due to him.
- 5) The respondents have allowed the revised pay-scales to certain categories of staff like Para-Medical personnel and Stenographers in the organisation while denying them in his case.
- 6) Such revised time-bound scales are actually intended to benefit those officers or officials who may have been stagnating at the maximum of existing scales, as indeed he has been stagnating.

3. In the counter, the Respondents make only two points and lay great stress on one of them. They argue, firstly, that the claim for revised pay-scales from 1.1.1986 is time-barred and attracts limitation. Secondly, they repeatedly emphasise that the recommendation of the Commission suggesting [redacted] higher scales for JEs of CPWD

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 was exclusively applicable to the CPWD and not other organisations. No such revised scale exists, or was accepted, in the Labour Ministry, and what has been given to the JEs of the said organisation on valid considerations ^{routinely} cannot be claimed or made available to JEs of other organisations, including the present application. The respondents add that, among such valid considerations is the fact that not many promotional avenues were available earlier to JEs of CPWD and in order, therefore, to improve or compensate for the bleak promotional prospects, the Commission recommended, and the Government accepted, the revised upward scales for JEs of CPWD. There is no other point of significance advanced by the Respondents in the counter-affidavit.

4. Before proceeding to deal with other aspects, it will be advantageous to meet and dispose of the two above cited arguments of the Respondents.

First, the question of limitation. It is seen that the applicant had submitted his first representation to the Welfare Commissioner, Labour Welfare Organisation on 23.7.1990. According to the applicant, no reply was at all received to this representation. According to the Respondents, this is not true because the applicant's representation was examined and turned down and the same was communicated to him on 21.3.1988. There is an obvious confusion here as the applicant refers to a representation submitted by him much after March, 1988, while the Respondents refer to some reply given by them nearly



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two years earlier than the representation. Moreover, the applicant claims to have sent in a further representation to the Director General, Labour Welfare Organisation, during April, 1991, while this application was filed in December, 1991, after sending a reminder to the authorities. The respondents are silent regarding this. Under the circumstances, we hold, for good and valid reasons, that the present application does not attract any limitation. I have decided in any case to deal with the present application on merits and, therefore, the plea of limitation advanced by the respondents is not accepted.

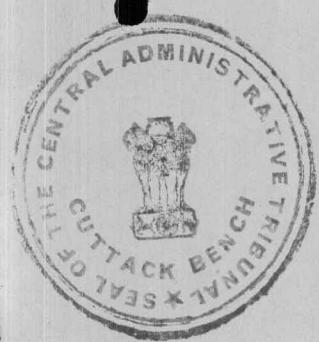
Secondly, adverting to the argument that the revised pay-scales introduced in the CPWD were solely with a view to improving the service prospects of JE's who lacked adequate avenues for professional advancement, I wish merely to observe at this juncture that the very same concern ought to inform the stance and attitude towards officials in other organisations, specially when these are considerably smaller in size and spread when compared to a vast undertaking like CPWD. What is regarded as a laudable consideration in a larger set-up, where improved scales are thought to be desirable palliatives owing to a multiplicity of posts with inadequate promotional avenues, - becomes doubly desirable in a small set-up with a lone post, where promotions are even more difficult or virtually non-existent.

5. The Labour Welfare Organisation is charged with the implementation of many onerous tasks in order to promote the well-being of miners and workers. These include various

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amenities like provision of hospitals and dispensaries, hostels, schools and maternity centres, and improving the existing housing, water-supply and recreational facilities. Until the creation of a post of Junior Engineer in the Orissa region in Labour Welfare Organisation in 1977, all civil engineering works pertaining to the Organisation in the area were presumably looked after, executed or supervised by the CPWD. Whereas certain departments under the Government have created their own Engineering Units, there are a large number of corporations, undertakings and departments who still depend on the CPWD, acknowledgedly the premier 'agency of the Central Government operating throughout the country for construction, maintenance and repair of all works and buildings financed from Civil Works budget', or for taking up deposit works or rendering even now consultative and advisory functions. Thus, very few departments have their own full-fledged Engineering Units or Wings. The nature and sphere of their activity, regardless of whether or not they depend on CPWD for execution, repair, maintenance or advisory services, or have their own Engineering Wings, is basically the same. The difference is only in the number, size, degree or extent of the tasks. The Labour Welfare Organisation does not have a full-fledged Engineering Unit. The size and volume of funds spent on construction works is smaller than the level of assistance ^{extended} in the form of subsidies, grants, scholarships and loans. For execution of new works they depend on outside agencies,

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authorities and bodies. The respondents insist that, unlike the JE's of CPWD, those employed in L.W.O are not required to directly undertake construction work. In other words, the work of a JE in the LWO is essentially supervisory whereas the nature of duty of JE's in CPWD is largely executive. This is evidently due to the fact that the volume of construction works in ~~the concerned~~ the LWO is not large enough to warrant or justify the creation of a full-fledged ^{Civil} Engineering Unit or Wing. To that extent, it may be argued on behalf of the applicant that it is not due to his own inability or professional inadequacies which prevent his tackling the construction work directly. It is due to the overall constraints, like for instance, the insufficiency of new constructions and the budgetary size in the organisation, and consequent absence of a full-fledged Engineering Wing in it, that has resulted in the present situation he finds himself in. For the rest he has the same basic qualifications as the JE's of CPWD. The kind of work he does, and the tasks he is called upon to perform, are all akin to those undertaken by his counterparts in the CPWD. If he is not required to take up the supervision of direct construction, it is because of the fact that such work is not available in the organisation, and certainly not because he is not competent to discharge the responsibility, if and when asked to do so. His capabilities have in reality not been tested in that direction.

6. Next, I turn to the charter of duties of the



T. S. Jadhav, M.A.

applicant in his present appointment. According to the revised memo of allotment/distribution of work issued by the Labour Welfare Commissioner, Bhubaneswar, in June, 1979, (produced as Annexure 3 by the Respondents) the applicant is in charge of works relating to housing, water-supply including sinking of wells, preparation of plans and estimates, supervision of Civil Works under execution, certifying the works done prior to payment to the executing agencies, to record progress of works, and miscellaneous paper-work and maintenance of records incidental to his tasks, like sanctions, etc., besides timely preparation of due reports and returns. Now, it is nobody's case that these tasks and responsibilities are even remotely non-engineering in nature. These are precisely the kind of tasks which may well be performed by any or all engineers, including by ~~the~~ JE's of CPWD as well. There is no indication that an Assistant Engineer is borne or posted on the establishment of the organisation. Thus, the applicant's is the solitary engineering presence whose overall responsibility encompasses the supervision of all civil engineering works sanctioned by and executed for the organisation in the region. Even if his duties do not include direct execution of works, - because such execution is not undertaken by the organisation, - the residuary body of tasks entrusted to him is enough to conclude that he is in charge of all technical aspects and related paper-work. In other words, he is the resident engineer - and the sole one - in the set-up.

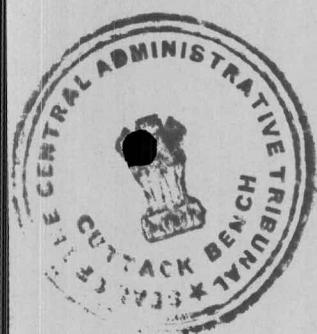
7. Prior to the creation of JE's in the L.W.O.,



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the works were either executed or supervised by CPWD. The creation of posts of JE's in LWO was done in consultation with and with the concurrence of the CPWD. Moreover, the CPWD, being the premier service of its kind in the country, the pattern of new creations and their duties were prescribed in consultation with ~~it~~. The scales of pay as obtaining in CPWD were given to the JE's in LWO. The revision of pay as recommended by two successive pay commissions for JE's of CPWD were extended, *suo moto*, and implemented in respect of JE's of LWOs as well. As against so many ~~areas~~ denoting commonality, the only divergence has been in the matter of granting the applicant the scales made applicable and available to JE's of CPWD with 5 years and 15 years of completed service. I am unable to fathom the reasons for this deviation when the applicant was given the initial pay-scale of JE's in CPWD and also successively given the identical benefit of revised scales as recommended and implemented by the III and IV Pay Commissions. This fact alone supports the contention of the applicant that the authorities treated the JE's in LWO as identical and on par with those in CPWD and did not make any artificial or unfeasible distinctions between the two. ~~coupe~~ Under the circumstances, I think it is unfair as well as impermissible to seek to import distinctions between them at this belated stage. The only ground on which such distinction is made is that the applicant is not required to execute any work directly. This question has already

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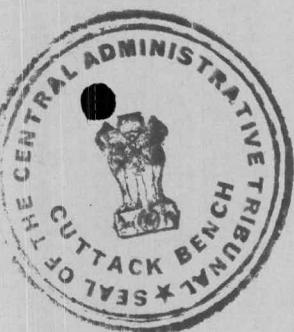
been dealt with and I am not convinced about the soundness or acceptability of this particular argument.

8. There are some other aspects to be dealt with in this case. The respondents plead that the concept of Equal Pay for Equal Work cannot be invoked because the nature of work done by two groups of workers should be equal in all respects which, according to them, is not true of the present case. They add that the question of what precise scale of pay should be given to a particular group of employees should be best left for expert bodies to decide and that courts ought not to interfere in such matters by equating unequal or dissimilar groups, classes or cadres of workers.

In tackling this argument viz., that the courts do not possess the power to assess work-load and that the equating of cadres is the exclusive prerogative of an expert body, I find that this very proposition was dealt with by this Bench exhaustively in O.A.219/91 (Minaketan Mishra vs. Union of India and Others). In his judgment dated 28th August, 1992, the learned Single Judge observed as under:

".... This averment is absolutely devoid of merit. There are beadroll of judgments of the Apex Court, High Courts, different Benches of the CAT ordering proper fixation of the pay-scale of an employee, comparing the nature of work and responsibilities attached to the said nature of work between one set of employees..

If this contention is accepted, then the party aggrieved has no place to seek redress of his grievance. Who else could redress the grievance of an employee except the Court ? When an arbitrary or capricious order is passed by the Government, it could be nobody else other than the Court, and, therefore,



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Hon'ble Mr. Justice Krishna Iyer, in one of his judgments said that the Courts are meant to strike down the bad orders of the Government..."

8. I need scarcely add any comment to such clearly-stated view except to append a hearty endorsement to it. I hold, therefore, that this Bench is perfectly within its jurisdictional rights to decide this question.

9. Referring to a decision (Secretary, Finance Department and Others vs. West Bengal Registration Association and others - AIR 1992 SC 1203), the Respondents point to a set of parameters laid down by Hon'ble Supreme Court in the matter of evolving appropriate pay-scales for a group or class of employees. These include method of recruitment, the level at which recruitment is made, hierarchy of service in a given cadre, minimum educational, technical qualifications required, avenues for promotion, nature of duties and responsibilities, horizontal and vertical relativity with similar jobs, public dealings, satisfaction levels and employer's capacity to pay, etc.' This set of parameters is certainly not intended to be definitive or exhaustive but obviously indicative. It would neither be necessary nor possible to apply each of these criteria to every case, nor to confine oneself to these alone in all cases. However, applying some of these yardsticks- like, for example, the level at which the recruitment of JEs is made in IWD, minimum educational and technical qualifications required, nature of duties and responsibilities, - it cannot be denied that these are not dissimilar in the case of JEs both of CPWD as



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well as of IWO. In at least one case a JE of IWO rendered surplus in the organisation is shown to have been absorbed in CPWD., - an indication that in rare situations, a JE of the former organisation was considered fully eligible for absorption in a similar capacity in the other organisation. Even if not routine or widespread by any means, this admitted instance of lateral movement is at least indicative of identicity of the two cadres.

9. The applicant has repeatedly drawn attention to the fact that the IV Pay Commission did not prescribe any revision in the pay-scales of JEs of IWO. But, he argues, as they had always been treated on par with the JEs of CPWD in the past in the matter of pay-scales, and specially because they had also been given the revised scales recommended by the Commission for CPWD, it becomes incumbent on the part of the respondents to extend other logical benefits decided upon by the Government, which were after all in a sense an outflow and extension of those very recommendations. Not to do so would amount to discrimination. As against this, the respondents argue that the recommendations of the Commission were specifically and exclusively in respect of CPWD, and therefore, not applicable to JEs IWO. The learned Standing Counsel (Central) Shri Ashok Mohanty, cited the judgment of Hon'ble Supreme Court in Secretary Finance Department and Others vs. West Bengal Registration Services Association and Others (AIR 1992 SC 1203) in support of his contention on this aspect. I am of the

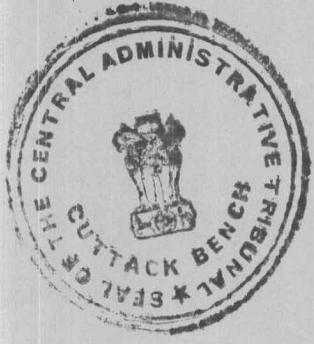


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view that the said judgment of Hon'ble Supreme Court is not applicable to the facts of the present case since that case dealt with the question of placing Sub-Registrars of Registration Service and Judicial Munsif Magistrates in the same pay-scales. It was held that the nature of duties performed and the level or responsibilities assumed by the two groups were dissimilar and unequal. Factually, therefore, the case cited by Shri Ashok Mohanty is clearly distinguishable inasmuch as it dealt with two groups of officers belonging to two separate streams, whereas here is a case where the applicant is seeking parity with his counterparts in another organisation and with whom he had always been equated in the past.

10. As regards the contention of the Standing Counsel, Shri Ashok Mohanty, that the recommendations of the Pay Commission pertain only to JEs of CPWD and therefore inapplicable to LWO, the two questions that arise are : (a) whether the case of JEs of LWO was specifically referred to the Commission and examined by it; (b) if it was not so referred, do the recommendations made in favour of the members of 'parent' technical cadre, - which CPWD can doubtlessly be regarded as on account of its pre-eminent status in the field - not have application in respect of similar cadres in a smaller organisation ?

11. The position quite simply is that the case of JEs of LWO was presumably not specifically referred to the Commission, with the result that no specific recommendations were made for them. It is well-known



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that it is not found necessary to refer the case of every small group of officials in numerous departments in the Government to the Pay Commission. It is equally not possible for the Pay Commission to deal with the case of every small group. In such situations, the recommendations made by the Commissions in respect of large representative groups or cadres of employees are accepted, adopted and applied to similar small groups and cadres, elsewhere. Such being the position, it is futile to argue that the concession announced for the personnel of CPWD shall be applicable only to that organisation because the said recommendation has been made specifically for them and that it shall not be available to the personnel of L.W.O. because the Commission had not made any specific recommendation in their favour. This line of argument, besides ignoring the fact that the case of JEs of L.W.O. was not referred to the Commission also suffers from and attracts a larger factor of inequity. In this connection, it will be instructive to take note of the judgment of the Hon'ble Supreme Court in *Purshottam Lal and others Vs. Union of India and others (AIR 1973 SC 1088)*. Their Lordships observed as under in paragraph 15 of the said judgment :

"Mr. Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing



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so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all Government employees or it has not. But if it has made a reference in respect of all Government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all Government employees. If it does not implement the report regarding some employees only it commits a breach of Arts. 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are concerned."



12. Considered in the light the discussion in the preceding paragraphs, it would be obvious that the denial of revised pay scales announced by the Government, in respect of JE's of the CPWD on completion of 5 and 15 years of service, to the present applicant would amount to discrimination inasmuch as the basic qualifications and the basic nature of work performed by the JE's in the two organisations are not dissimilar.

13. If a part of the work done by JE's of CPWD is not being performed by the applicant, it is wholly due to the fact that such work is not made available to him to execute, and surely not on account of any professional inadequacies on his part. It is therefore, directed that

13. It is therefore, directed that the revised scale of Rs.1640 - 2900 and Rs.200-3500 be conferred on the applicant from the date on which he completed 5 and 15 years of service, respectively. Necessary orders to this

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effect shall be issued by the Respondents within 30 days from the date of receipt of a copy of this judgment.

Arrears on account of the resultant difference of the scales shall be calculated and disbursed to him within 90 days from the date of receipt of a copy of the judgment.

14. Thus, the application stands allowed leaving the parties to bear their own costs.



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MEMBER (ADMINISTRATIVE)

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Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 6th July 1994/ K. Mohanty