

10
23
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A. Nos. 155, 164, 163 and 162 of 1992

(Cuttack, this the 4th day of January 1999)

Golak Ch. Swain and others Applicants

Vrs.

Union of India and others Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

3/1/99
(A.K. MISRA)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
1.1.99

244

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NOS. 155, 164, 163 & 162 OF 1992

Cuttack, this the 4th day of January 1992

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI A.K.MISRA, MEMBER(JUDICIAL)

.....

In OA 155/92

Sri Golak Chandra Swain,
son of Muralidhar Swain
now working as Radio Mistry,
Aviation Research Centre,
At/PO-Charbatia, Dist.Cuttack

.....

In OA 164/92

Sri Natabar Nanda
s/o Sri Pranakrishna Nanda,
Radio Operator, Aviation Research Centre,
At/PO-Charbatia,
Dist. Cuttack.

In OA No. 163/92

Sri Sanjit Kumar Patra
s/o Sri Ajit Kumar Patra
now working as Radio Technician,
Aviation Research Centre
At/PO-Charbatia, Dist.Cuttack.

In OA 162/92

Shri Ranjit Kumar Bose Roy Choudhury,
Aerodrome Operator Gr.I
Aviation Research Centre,
At PO-Charbatia, Dist. Cuttack

..... Applicants

By the Advocates - M/s CMK Murty & S.K.Rath

Vrs.

In all the four OAs

1. Union of India, represented by the Cabinet Secretariat, Bikaner House, New Delhi.

2. Director General of Security,
Cabinet Secretariat, East Block-V,
R.K.Puram, New Delhi-1100 66

3. Director, Aviation Research Centre, Cabinet
Secretariat, East Block, V, R.K.Puram
New Delhi- 11 00 66

4. Deputy Director, Aviation Research Centre,
At/PO-Gharbatia, Dist.Cuttack

... Respondents

By the Advocate - Shri Ashok Mohanty,
Sr.C.G.S.C.

ORDER

SOMNATH SOM. VICE-CHAIRMAN

These four Original Applications have been heard together. The petitioners claim parity with the pay scales enjoyed by their counterpart employees in the National Airport Authority and also claim benefit of career advancement in accordance with the Ministry of Finance circular dated 13.9.1991. The petitions are similar. Identical counters have been filed by the respondents and the rejoinders filed by the applicants in these four cases are also on the same lines. Learned counsels of both sides have argued these matters jointly and one order will govern these four cases. For the purpose of consideration of various submissions made by learned counsels of both sides, facts of OA No.155/92 are being referred to. Reference will, however, be made wherever necessary to the facts of other three cases.

2. Petitioner in OA No.155/92 joined Aviation Research Centre, Charbatia, as Radio Mistry in Air Traffic Control with effect from 1.7.1971. At that time, similar posts

were there in DCCA/NAA and nature of duties of both the posts was same and the scale of pay was identical at Rs.110-155/-.

In DGCA the pay scale of Radio Mistry was revised with effect from 1.9.1982 and this was made Rs.380-560/-. But no such revision was made in the pay scale of Radio Mistry in Air Traffic Control (ATC) Wing of Aviation Research Centre, Charbatia. With the Fourth Pay Commission recommendation the pay of Radio Mistry of A.R.C., Charbatia, was revised to Rs.950-1400/-. In D.G.C.A. the post of Radio Mistry was upgraded and merged with Equipment Mechanic and the Equipment Mechanics got revised pay under the Fourth Pay Commission recommendation in the scale of Rs.1320-2040/- with effect from 1.1.1986.

The petitioner made several representations to the authorities and the authorities at Charbatia made prolonged correspondence with Cabinet Secretariat vide Annexures 1 to 9 in which the claim of parity with the staff of DGCA/NAA was accepted and recommended by the authorities at Charbatia, but no final decision was taken by the Cabinet Secretariat. The office of Director General of Security, Cabinet Secretariat also took up the issue of revision of pay scale in their letter which is at Annexure-10. In this letter, which appears to be an intra-departmental memo the revision of pay scale of ATC staff at A.R.C., Charbatia, on the pattern adopted for similar posts in DGCA/NAA was recommended except in cases of four posts where the pre-revised scales of the staff at Charbatia were higher than the scales in NAA. But those posts do not concern us in these applications. As no orders were

J.W.M.

passed in spite of long lapse of time, the applicant has come up in the present application praying for a direction to the respondents to upgrade his post to that of Equipment Mechanic with effect from 1.1.1986 and grant him the benefit of revised pay scale allowed to his counterpart in DGCA/NAA with effect from 1.9.1982 in the scale of Rs.380-560/- and with effect from 1.1.1986 in the scale of Rs.1320- 2040/-. The second prayer of the petitioner is for granting him the benefit of career advancement in accordance with the Finance Ministry's circular dated 13.9.1991 at Annexure-11.

3. The respondents in their counter have submitted that as the prayer is for revision of pay scale from 1.9.1982 and 1.1.1986, the petition having been filed in 1992 is barred by limitation u/s.21 of Administrative Tribunals Act,1985. The respondents have admitted that in NAA the pay scale of Radio Mistry was revised to Rs.380-560/- with effect from 1.9.1982. The respondents have stated that the nature of duties performed by ATC Wing of A.R.C., Charbatia, is different from the work of persons manning similar posts in DGCA, a part of which has been designated as National Airports Authority of India. They have stated that persons working under NAA of India handle larger number of aircrafts of different categories with different code signs whereas persons in ATC Wing of A.R.C., Charbatia, control limited number of aircrafts. Thus, the nature of duties of the two categories of staff, according to the respondents, is different. The respondents have stated that a proposal

J.JM

for revising the pay scale of the staff of Air Traffic Control unit of Aviation Research Centre, Charbatia, at a level commensurate with their work is under active consideration of Government of India, but no final decision has been taken. On the question of benefit of career advancement, the respondents have taken the stand that the benefit of the circular dated 13.9.1991 is applicable only to those persons who are stagnating in one scale of pay and the scale of pay of ATC staff of ARC, Charbatia, has been revised with effect from 1.1.1986. However, the issue has been taken up with Government of India and the proposal has been submitted in respect of many categories of staff for giving them the benefit of career advancement. But the proposal is pending and no final decision has yet been taken. Therefore, it has been claimed that the application is premature. The respondents have further stated that the Government are contemplating a cadre review of the staff of Air Traffic Control Unit of ARC, Charbatia and after the review, final decision will be taken and "there is likelihood of providing some relief to the staff those like the applicant". (emphasis supplied). On the above grounds, the respondents have opposed the prayers of the applicant.

J.JM.

4. The applicant in his rejoinder has submitted that the stand taken by the respondents that the National Airports Authority of India is an autonomous body and the staff working in similar post there are performing more onerous duties as well as the stand of the respondents that the petitioner is not entitled to the benefit of career

advancement because his pay scale having been revised with effect from 1.1.1986 he is not facing stagnation are untenable because the respondents themselves have in their letter at Annexure-11 supported these claims of the applicant. Moreover, the petitioner having remained in the same post for more than fifteen years, is entitled to have the benefit of career advancement.

5. The petitioner in OA No.164/92 joined A.T.C. of A.R.C., Charbatia, on 12.4.1971 as Radio Operator. At that time, the post of Radio Operator in Charbatia as well as under D.G.C.A. carried identical scale of pay of Rs.380-560/- and the nature of duties was the same. In DGCA the scale of pay of Radio Operator was revised with effect from 1.3.1982 to Rs.425-700/-. Subsequently, with the coming of recommendation of the Fourth Pay Commission, the Radio Operators in A.R.C., Charbatia, got the revised scale of Rs.1320-2040/- relatable to the earlier scale of Rs.380-560/- whereas in DGCA the post of Radio Operator was redesignated as Communication Assistant and the staff got replacement scale of Rs.1400-2300/- relatable to their increased scale of Rs.425-700/-. The applicant has further stated that with effect from 1.10.1990 the scale of pay of Communication Assistant was revised to Rs.1640-2900/- in the circular dated 4.11.1991 of N.A.A., but the applicant continued to get the scale of pay of Rs.1320-2040/- from 1.1.1986 and this higher scale given to his counter-part with effect from 1.10.1990 was not given to him. He made several representations and his case along with the case of some other staff of ATC Wing of ARC, Charbatia, was recommended by the local

J Jom.

authorities, but no final decision was taken. It is further stated that in circular dated 13.9.1991 Finance Ministry allowed benefit of career advancement to certain categories of Groups C and D employees, but this benefit was also not given to him even though on his representations his case was recommended. In view of this, the petitioner has prayed for a direction to the respondents to upgrade his post to that of Communication Assistant with effect from 1.1.1986 and grant him the benefit of revised pay scale allowed to his counterparts in DGCA/NAAI with effect from 1.3.1982 in the scale of Rs.425-700/-, with effect from 1.1.1986 in the scale of Rs.1400-2300/- and with effect from 1.10.90 scale of Rs.1640-2900/-. He has also claimed benefit of career advancement as provided in the circular dated 13.9.1991.

6. In OA No.164 of 1992 the respondents in their counter have opposed the prayers of the applicant on the same grounds as in counter to OA No.155/92. As a matter of fact, the counter is identical and holds out the same hope of there being some likelihood of providing some relief to the applicant once a final decision is taken as in the case of the petitioner in OA 155/92.

7. The applicant in OA 164/92 has also filed a rejoinder which is identical to the one filed by the applicant in OA 155/92 and it is not necessary to note the averments made therein once again.

8. The applicant in OA No.163/92 joined as Radio Technician in ATC cadre of Aviation Research Centre, Charbatia, with effect from 26.11.1976. At that time there were similar posts under DGCA with the same responsibilities and both the posts in the two organisations had identical scale of pay of

Rs. 380-560/-.. In DGCA the scale of pay of Radio Technician was revised with effect from 1.3.1982 to Rs. 425-700/-. Therefore, with coming in of the Fourth Pay Commission recommendations, Radio Technician in Charbatia who were getting Rs. 380-560/- got the replacement scale of Rs. 1320-2040/- whereas the Radio Technicians under NAA who were getting the scale of Rs. 425-700/- got the replacement scale of Rs. 1400-2300/-. It is also relevant to note that with effect from 1.3.1982 in NAA the post of Radio Technician was redesignated as Technical Assistant. The petitioner further states that in N.A.A. the Technical Assistants were given a higher scale of Rs. 1640-2900/- with effect from 1.10.1990. The petitioner also submits that he was not given the benefit of career advancement in accordance with the circular dated 13.9.1991. This was allowed to the Technical Assistants of N.A.A. in circular dated 4.11.1991 (Annexure-12). The petitioner filed several representations and they were also favourably recommended, but no final decision was taken. In view of this, the petitioner has prayed for a direction to the respondents to upgrade his post to that of Technical Assistant with effect from 1.1.1986 and grant him the benefit of revised pay scale allowed to his counterparts in DGCA/NAA with effect from 1.3.1982 in the scale of Rs. 425-700/-, with effect from 1.1.1986 in the scale of Rs. 1400-2300/- and with effect from 1.10.90 scale of Rs. 1640-2900/-. He has also claimed the benefit of career advancement as provided in the circular dated 13.9.1991.

9. In OA No. 163 of 1992 the respondents in their counter which is identical to the counters filed in OAs 155/92 and 164/92 have opposed the prayers of the applicant on the ground of limitation and secondly on the ground that the nature of duties performed by the staff in AIC Wing of ARC, Charbatia, and DGCA/NAA is different and the staff in DGCA/NAA discharge more onerous responsibilities.

J.J.M.

They have also stated that the question of revision of pay scale of the staff of ATC Wing has been taken up with the Government of India, but no final decision has been taken.

They have also mentioned about the cadre review and the likelihood of providing some relief to the staff like the ~~other~~ applicants when final decision is taken in the matter.

10. The applicant in OA No. 163/92 has filed a rejoinder identical to those filed in other OAs and it is not necessary to repeat the averments made therein.

11. In OA No. 162/92 the applicant was appointed as Aerodrome Operator on 1.2.1975. At that time, the scale of pay of Aerodrome Operator in ATC Wing of ARC, Charbatia, and in DGCA was identical and that was Rs. 380-560/-.

In DGCA the pay scale of Aerodrome Operator was revised to Rs. 425-700/- with effect from 1.3.1982, but the pay scale of Aerodrome Operators in ATC Wing of ARC, Charbatia was not revised. Thus, with the coming into effect of Fourth Pay Commission recommendation, Aerodrome Operators of ATC Wing of ARC, Charbatia, got replacement scale of Rs. 1320-2040/- whereas Aerodrome Operators in DGCA/NAA where the post was upgraded and merged with the post of Aerodrome Assistant got the replacement scale of Rs. 1400-2300/-. Again with effect from 1.10.1990 vide order at Annexure-12 the scale of pay of Aerodrome Assistant was revised to Rs. 1640-2900/- but the Aerodrome Operators of ATC Wing of ARC, Charbatia continued to get the scale of Rs. 1320-2040/-. It is also stated that the benefit of career advancement allowed in Ministry of Finance's circular dated 13.9.1991 was not made applicable to the applicant. He made several representations and his representations were forwarded with favourable

Jpm.

34

recommendation, but no final decision was taken. In view of this, the petitioner has prayed for a direction to the respondents to upgrade his post to that of Aerodrome Assistant with effect from 1.1.1986 and grant him the benefit of revised pay scale allowed to his counterparts in DGCA/NAA with effect from 1.3.82 in the scale of Rs.425-700/-, with effect from 1.1.1986 in the scale of Rs.1400-2300 and with effect from 1.10.90 scale of Rs.1640-2900. He has also claimed benefit of career advancement as provided in the circular dated 13.9.1991.

12. The respondents in their counter identical to what have been filed in the other OAs, have opposed the prayers on the same grounds.

13. The rejoinder filed by the applicant in OA No.162/92 is also similar to those filed by the applicants in other three cases and therefore, it is not necessary to repeat the averments made in the rejoinder.

14. We have heard Shri C.M.K.Murty, the learned counsel for the petitioners and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records.

15. The claims of the petitioners in these four petitions fall in two parts. The first prayer is with regard to revision of pay scale at par with their counterparts in DGCA/NAA and the second prayer is regarding giving them the benefit of career advancement. These two prayers are taken up separately.

16. Their first prayer relating to revision of pay scale is based on the accepted principle of learned equal pay for equal work. It has been submitted by the/counsel

for the petitioners that the work and responsibilities of the petitioners who are working in ATC Wing of ARC, Charbatia, are the same as their counterparts working in DGCA and later on, under NAAI. It is submitted that originally the scales of pay of different categories of staff of ATC Wing of ARC, Charbatia and DGCA were the same. But subsequently the pay scales of staff working in DGCA/NAAI were revised with effect from 1.3.1982. As no such revision was made for the staff in ATC Wing of ARC, Charbatia, the difference was carried on and accentuated with the coming in Fourth Pay Commission recommendation. The respondents, on the other hand, have claimed that the staff working in DGCA/NAAI perform more onerous duties and responsibilities and their pay cannot be compared with the corresponding staff in ATC Wing of ARC, Charbatia. This appears to us to be the crux of the present controversy. The respondents have stated that ATC staff in ARC, Charbatia, handle limited number of departmental aircrafts whereas the staff working under NAAI handle larger number of aircrafts with different code signs and on this ground, they have averred that the work and responsibilities cannot be taken to be the same. From the enclosures & filed along with the O.A.s. we, however, note that the departmental authorities at Charbatia & have all along taken the stand that the scale of pay of ATC Staff in ARC, Charbatia, should be the same as the corresponding staff in DGCA/NAAI. In the letter at Annexure-1 ARC Headquarters have written to

J. J. M.

Deputy Director (Administration), ARC, Charbatia, that the Aeronautical & communication and Aerodrome Operational staff can be paid the same OTA as has been allowed by the Ministry of Civil Aviation in their letter dated 19.7.65. In the letter dated 6.10.1988 from headquarters of ARC to National Airports Authority of India, it has been mentioned in paragraph two that the pay and allowances of the staff of ATC Wing are based on pattern of ATC Unit in DGCA (now NAAI). In this letter NAAI was moved to furnish to the Cabinet Secretariat the pre-revised and revised pay scales of similar/ corresponding posts in the NAAI. Again in letter dated 1.11.1989 from the office of Director General of Security, in paragraph 2, the following observation has been made:

"The ATC unit in ARCDirectorate has been set up on the pattern of the ATC unit in the DGCA (now NAAI) and the pay and allowances of ATC staff are regulated on the analogy of ATC Unit in NAAI."

In this letter, the question of revision of pay scales of Radio Mistry, Radio Operator, Radio Technician and Aerodrome Operator Gr.I, i.e., the scales of pay of the applicants in these four cases, was sought to be taken up on receipt of the detailed qualifications and duties prescribed for these posts in NAAI. Annexure-10 is a letter dealing with revision of pay scales of the posts in ATC unit of ARC. This is a memo dated 26.6.1991 sent by Deputy Director (A), Directorate General of Security, Cabinet Secretariat, to Director (SR), ARC Directorate. It is thus an intra-departmental memo.

J. J. M.

23

34

-13-

Paragraphs 4 and 5 of this letter throw considerable light on the present controversy leading to the difference in pay scales of the applicants and the corresponding staff in National Airports Authority of India, and these two paragraphs are quoted below in full:

"4. The pay scale of 5 posts, i.e. 1) Aerodrome Operator Gr.I, 2) Radio Technician, 3) Radio Operator 4) Radio Mistry, 5) Traffic Hand were revised in NAAI with effect from 1.3.82 and 1.9.82 (in respect of Radio Mistry) and therefore, were higher in NAAI during 3rd Pay Commission and accordingly they were given the normal replacement scale during 4th Pay Commission. The post of Radio Mistry was redesignated as Equipment Mechanic in NAAI w.e.f 11.3.74 and consequently the pay scale was revised from 260-400 to Rs. 380-560/- w.e.f 1.9.82. The ARC Dte could not take up the revision of pay scale of its ATC staff at par with their counterparts in NAAI w.e.f 1.3.82 and 1.9.82 as ARC Dte was not aware of such upward revision of scale in NAAI at appropriate time during 3rd Pay Commission.

5. The pay structure of ATC posts in ARCDte is based on the NAAI scales. It is, therefore, considered appropriate to fall in the line with NAAI's pay scales. Had the merger of various ATC posts as was done in NAAI, been implemented in ARC Dte w.e.f 1.3.82 and 1.9.82 most of the personnel would have got the benefits at par with their counterparts in NAAI. Since the merger could not be effected in ARC Dte due to non-availability of information a bigger percentage of ATC staff, i.e. 1) Aerodrome Operator Gr.I 2) Radio Technician, 3) Radio Operator, 4) Radio Mistry, 5) Traffic Hand have been denied of benefits as available to their counterparts in NAAI. The revision of pay scales that we propose to do in respect of ATC posts in ARC Dte on the similar lines done in NAAI has been given in Annexure "A"."

The above letter at Annexure-10 is a proposal from A.R.C. Headquarters to Cabinet Secretariat for bringing the pay scales of the posts in ATC Unit of ARC, Charbatia, including the posts held by these four applicants, at par with the similar posts in National Airports Authority of India. But, apparently, no decision has been taken on this proposal dated 26.6.1991. The

JDM

24

38

-14-

respondents have stated in their counter that the proposal is pending for consideration by Government of India and no final decision has yet been taken and therefore, the application is premature. The respondents have also stated that the Department has taken up the question of revision of scale of pay of ATC staff of ARC and also the cadre review and after final decision is taken, there is likelihood of providing some relief to the staff like the applicants in these cases.

17. The applicants have stated that the matter is pending for long and in spite of their representations, no final decision is being taken and that is how they have approached the Tribunal.

18. The respondents have taken a preliminary point that the applicants want parity with the staff of DGCA/NAAI with effect from 1.9.1982 in QA No.155/92 and from 1.3.1982 in the other three applications and they also want the corresponding replacement scale from 1.1.1986 and again the higher scale of pay allowed to their counterparts from 1.10.1990. It is stated by the respondents that the claim for parity in pay scales from 1.3.1982 and 1.9.1982 is barred under Section 21 of Administrative Tribunals Act, 1985.

Under the above Section, the Tribunal has no jurisdiction to look into any grievance which has arisen earlier than three years immediately preceding the date of establishment of the Tribunal. The Tribunal having been established with effect from 1.11.1985, the claim for parity with effect from

ADM

1.3.1982 and 1.9.1982 is barred under Section 21 of the Act. In this case the corresponding posts under DGCA/NAAI were redesignated as referred to earlier with effect from 1.9.1982 and 1.3.1982. The departmental authorities have mentioned that they have not been able to take up the question of corresponding change in the designation and giving of higher pay scale as redesignation and change in the scale of pay of staff of DGCA/NAAI was not known to them. This also became known to the applicants only after coming into force of the recommendation of the Fourth Pay Commission from 1.1.1986 when by introduction of the replacement scales of the Fourth Pay Commission difference in scales of pay got accentuated. The applicants had no means of knowing that the designation and scales of pay of their counterparts in DGCA/NAAI have been changed and upgraded with effect from 1.9.1982 and 1.3.1982. In view of this, we hold that this contention of the learned Senior Standing Counsel for the respondents is without any merit and this part of the prayer of the applicants is not hit by Section 21 of the Administrative Tribunals Act, 1985.

19. The applicants have based their claim of parity with the designation and scale of pay of their counterparts in DGCA/NAAI on the principle of equal pay for equal work. It has been submitted by the learned counsel for the petitioners that even though the equal pay for equal work is not a fundamental right, it is implicit in Articles 14, 16 and 39 of the Constitution. Persons discharging the same duties

J.W.M.

26
70

and responsibilities are entitled to be treated equally and thus any discrimination in the matter of scale of pay given to them would be violative of Articles 14 and 16. The applicants have further stated that the work and responsibilities discharged by them are the same as their counterparts in DGCA/NAAI. They have also stated that initially their designation and scale of pay were the same as their counterparts in DGCA/NAAI and this shows that they are discharging same duties and responsibilities. The respondents have contested the above submissions and have stated that the applicants working in ATC Unit of ARC, Charbatia, are to perform limited duties of controlling air traffic of limited number of departmental aircrafts whereas persons manning the posts in the Directorate General of Civil Aviation, a part of which has been designated as National Airports Authority of India have to perform the work of air traffic control with different categories of aircrafts with different code signs and have to handle larger volume of traffic. According to the respondents, the duties performed by the persons working with DGCA/NAAI are more onerous than what is performed by the staff of ATC Unit in ARC, Charbatia. It is further stated that in any view of the matter, the Department has taken up the matter with Government of India to grant the staff of ATC Unit of ARC, Charbatia, revised scale of pay commensurate with their work, and the proposal is under active consideration of Government of India. We have considered the above submissions of the learned counsels of both sides. There is no material before us as to the volume of

J. J. M.

traffic handled by the ATC staff of ARC, Charbatia and what is handled by similarly placed staff of DGCA/NAAI. But *prima facie* this contention of the respondents does not appear to be valid. This is because DGCA/NAAI staff corresponding to the applicants work in different civil airports under the control of DGCA/NAAI. In all these airports volume of traffic is not the same. Compared to airports at Delhi, Calcutta and Bombay, the traffic is much less in Airports like Bhubaneswar. But the air traffic staff of DGCA/NAAI in different Airports get same scale of pay irrespective of volume of traffic handled by them. In many of the Airports like Bhubaneswar, the air traffic handled by them might be less than what is handled by ATC staff in ARC, Charbatia. But, as we have already noted, there is no material before us on this aspect. From the above discussion, it is clear that volume of traffic cannot be a relevant consideration in a matter of deciding parity in designation and scale of pay.

20. The next contention of the learned Senior Standing Counsel for the respondents is that the scale of pay given to the applicants who are employees of Government of India cannot be compared with the scale of pay of similar staff of NAAI which is an autonomous organisation. It has been urged that principle of equal pay for equal work would come into play only in respect of employees doing similar type of work and responsibilities under the same employer. In support of his contention, the learned Senior Standing Counsel relied on the decision of the Hon'ble Supreme Court in the case of

JFM

Union Territory, Chandigarh vs. Krishan Bhandari, 1997(5)

Supreme 202, where it was held that equal pay for equal work is a facet of the principle of equality in the matter of employment guaranteed under Articles 14 and 16 of the Constitution of India. This right to equality can only be claimed when there is discrimination by the State between two persons who are similarly situate. The said principle cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12 of the Constitution. In this case, the applicant who was working as Science Supervisor in Union Territory of Chandigarh claimed parity with the corresponding staff in Government of Punjab. His application was allowed by the Chandigarh Bench of the Tribunal, but on appeal to the Hon'ble Apex Court the claim for equal pay for equal work was rejected on the grounds mentioned above. The learned Senior Standing Counsel has also relied on the decision of the Hon'ble Supreme Court in the case of Harbans Lal and others v. The State of Himachal Pradesh and others, Volume 10, Supreme Court Service Rulings 459, where it was laid down that for invoking the principle of equal pay for equal work, discrimination complained of must be within the same establishment owned by the same management. A comparison cannot be made with counterparts in other establishments with different management or even in establishments in different geographical locations though owned by the same master. In that case the applicants who claimed equal pay for equal work were Carpenters, First and Second Grade, employed

JMM

at the Wood Working Centre of Himachal Pradesh State Handicraft Corporation and they demanded payment in terms paid to their counterparts in regular Government service under State of Himachal Pradesh. On the basis of the law as laid down above, the contention was rejected. Krishan Bhandari's case (supra) is clearly distinguishable from the facts of this case, because there the person claiming equal pay for equal work was working under Union Territory Administration and was claiming parity with the pay scale of his counterparts working in the State of Punjab. In the instant case, both the organisations are in a way under Government of India. The respondents have stated in their counter that a part of the functions of DGCA was separated and National Airports Authority of India was created as an autonomous organisation. The employees of Director General of Civil Aviation are Government employees and as we have noted earlier, at the initial stage the designation and scale of pay of the applicants and their counterparts in DGCA were the same. As a matter of fact, it is on record before us that when Aviation Research Centre at Charbatia was established, designation and pay scale of Air Traffic Control staff were fixed in line with similar staff in DGCA, a part of which has now been reconstituted as National Airports Authority of India. From the memo dated 26.6.1991 at Annexure-10 it appears that scales of pay recommended by the Fourth Pay Commission have been made applicable to the counterpart staff of NAAI with effect from 1.1.1986, the date from which the recommendations were given effect to for Government of India employees. Moreover, ARC Headquarters themselves have

J.S.M.

drawn up proposal for revised scales of pay for ATC staff of ARC, Charbatia, basing on the scales of pay enjoyed by the counterpart staff of DGCA/NAAI. In Harbans Lal's case (supra) the applicants claiming parity were employees of a Corporation under the Himachal Pradesh Government and they claimed parity with the similar employees of Government of Himachal Pradesh. The facts and circumstances of the present applications are, therefore, clearly distinguishable from the facts and circumstances of Harbans Lal's case (supra). Moreover, the respondents themselves having initiated proposal for revision of scales of pay in line with the scales of pay enjoyed by the counterpart staff in NAAI cannot be allowed to resile from their earlier position on the ground that NAAI is an autonomous organisation. It is seen from letter dated 6.8.90 of ARC Headquarters addressed to Deputy Director, ARC, Charbatia, which is at Annexure-7 of OA No.155/92 that ARC, Charbatia, has been informed about the action taken on the pending representations in the following words:

".....The case will be taken up on receipt of information from NAAI only. Posts whose pay scales need to be revised in ARC along with change of designation at par with their counterparts in NAAI are as under:-

- i) Aerodrome Operator Gr.I
- ii) Radio Technician,
- iii) Radio Operator
- iv) Radio Mistry
- v) Traffic Hand (no change of designation).

3. DD(A), NAAI, New Delhi has been last reminded by us to furnish the required information vide our letter No. ARC/Coord/103/87-2008(6), dt. 20.5.90, copy of which was sent to you. However, efforts to get the information on personal level is also in progress."

S. J. M.

MS

From the above also it is clear that ARC authorities themselves were processing the case of change of designation and revision of pay scale of these applicants at par with their counterpart staff in NAAI. In view of this, the contention of the learned Senior Standing Counsel is rejected.

21. The next aspect is that for claiming parity in pay scale on the principle of equal pay for equal work, it is not enough to show that the work done and responsibilities discharged by the persons claiming parity are similar to the work and responsibilities of those with whom parity is claimed. Similar staff doing similar type of work in two organisations under the same Government may have different educational and other entry qualifications. This is also an aspect which has to be kept in view. This aspect has been considered by the Hon'ble Supreme Court in the case of Mew Ram Kanojia vs. All India Institute of Medical Sciences and others, Volume 10 Supreme Court Service Rulings 345. The petitioner in that case was a Hearing Therapist in All India Institute of Medical Sciences where his post and services have been transferred from a Project funded by Indian Council of Medical Research. He claimed equal pay under the above principle with certain other staff of AIIMS like Senior Speech Pathologist, Senior Physiotherapist, Senior Occupational Therapist, Audiologist and Speech Pathologist, etc.. At the time of hearing, the counsel for the petitioner confined the petitioner's prayer for parity with Audiologist. In this case, the Hon'ble Supreme Court took note of the essential qualifications for the post of Audiologist and Hearing Therapist, and found substantial difference

J.S.M.

between the two. It was held that in cases where even the duties and functions are of similar nature but the educational qualification for the two posts is different and there is difference in measure of responsibilities, the equal pay for equal work would not apply. Same view has been taken by the Hon'ble Supreme Court in the case of State of Haryana and another vs. Ram Chander and another, 1997(4) Supreme 592, where it has been held that for application of principle of equal pay for equal work and consequent claim of parity in pay scale, the claimants have to show that qualitatively and quantitatively the work they do is of the same type and nature and even the educational qualifications must be identical. In the instant case, the applicants have not mentioned about the educational or entry qualification for their posts. From the letter dated 6.8.1990 at Annexure-7 it appears that ARC authorities have called for information from DGCA/NAAI about qualification and duties prescribed for similar posts under them. In the proposal dated 26.6.1991 at Annexure-10 where ARC Headquarters have recommended revision of scales of pay of ATC staff in ARC, Charbatia, no reference has been made to the qualifications for such posts for ATC Staff in ARC, Charbatia and for the counterpart staff in DGCA and now NAAI. In the absence of any pleading with regard to qualifications of the two sets of posts between which parity is claimed, it is not possible to record a finding in this regard. There is also another aspect of the matter to be considered. Parity in pay scales on the principle of equal pay for equal work can be allowed only after a proper job evaluation of the posts held by the claimants and the posts with which parity is claimed. Nature of duties and responsibilities

JJM.

and educational qualifications in both sets of posts would have to be identical for getting the same scales of pay on the above principle. It is difficult for a Court or Tribunal to do such job evaluation. In the case of Randhir Singh v. Union of India, 1982 (3) SCR 298, the Hon'ble Supreme Court have laid down as follows:

"It is true 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..."

In a subsequent case, State of U.P. and others v. U.P. Chaurasia and others, Volume 10 Supreme Court Service Rulings 403, it was laid down by the Hon'ble Supreme Court that entitlement to higher scale of pay on the principle of equal pay for equal work does not just depend upon either the nature of work or volume of work. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government, who are the best Judge to evaluate the nature of duties and responsibilities of post. In a later decision of the Hon'ble Supreme Court

in the case of Secretary, Finance Department and others

vs. West Bengal Registration Service Association and others,

AIR 1992 SC 1203,

the following observations have been made on this aspect:

"Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. Several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc...."

In view of this, it is clear that evaluation of the duties and responsibilities of the posts of the applicants in ATC Unit of ARC, Charbatia and the counterpart posts in DGCA/NAAI has to be done by the executive Government and the Tribunal will be ill-equipped to come to a finding on this aspect. At the same time, it is to be noted that this matter is pending with the respondents from 1991. Another Pay Commission have come in the meantime and have given their recommendations which have also been accepted by the Government and in the process, the difference in pay-scales must have been further accentuated as has happened on the basis of the recommendations of the Fourth Pay Commission. In consideration of the above, the respondents are directed to take a view on the pending question of change of designation and revision of pay scales of these applicants within a period of 120 (one hundred and twenty) days from the date of receipt of copy of this order and to intimate the result to the applicants within 30 (thirty) days thereafter. While so doing, the respondents will take note of the observations made by us in this order. The first prayer of the applicants is accordingly disposed of.

J. J. M.

-25-

22. The second prayer of the applicants is based on the circular dated 13.9.1991 at Annexure-11 dealing with career advancement of Groups C and D employees. The applicants have claimed the benefit under this circular. The respondents in their counter have stated that the pay scales of ATC staff of ARC, Charbatia, including these four applicants have been revised from 1.1.1986 and therefore, the applicants are not entitled to the benefit of this circular. In paragraph 2 of this circular dated 13.9.1991, it has been mentioned that the Scheme introduced in this circular would be applicable to (i) employees who are directly recruited to a Group 'C' or to Group 'D' post, (ii) employees whose pay on appointment to such a post is fixed at the minimum of the scale, and (iii) employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post. In case of Groups C and D employees who fulfil the conditions mentioned above would be promoted in situ to the next higher post. This circular came into force in the context of the recommendation of the Fourth Pay Commission, accepted by the Government, abolishing the selection grades in Groups C and D cadre. In the case of these applicants, as their pay has been revised from 1.1.1986, the respondents have stated that they would not fulfil the requirement of having reached the maximum of the pay scale. In any case, if any of the applicants are entitled to the benefit of career advancement and consequent insitu promotion to the next higher scale in terms of the circular dated 13.9.1991, the respondents are directed to examine and give them the benefit

J.J.M.

26

50

-26-

under the circular within a period of 60 (sixty) days from the date of receipt of copy of this order and intimate the result to the applicants within 30 (thirty) days thereafter. This prayer is accordingly disposed of.

23. In the result, therefore, these four Applications are disposed of in terms of the observation and directions given in paragraphs 16 to 22 of this order. No costs.

Sd/- A. K. Misra
Member - (3)

Sd/- Somnali Son
vice-chairman.