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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.619 OF 1994

AND

ORIGINAL APPLICATION NO.615 OF 1994

Cuttack, this the 16th day of September, 1998

B.K.Sahoo and others (in OA No.619/94)

P.K.Sarangi and others (in OA No.615/94) ... Applicants

Vrs.

Union of India and others.....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO*

G. Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
16.9.98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.619 OF 1994

AND

ORIGINAL APPLICATION NO.615 OF 1994

Cuttack, this the 16th day of September, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

In OA No.619/94

1. B.K.Sahoo, working as Painter
2. N.N.Behera working as Welder
3. J.B.Mallik, working as Carpenter
4. D.C.Pattnayak, working as Turner
5. B.C.Maharana, working as Blacksmith
6. H.K.Moharana, working as Carpenter
7. J.Behera, working as Electrician
8. S.Ojha, working as Welder
9. U.C.Choudhury, working as Upholster
10. A.Ojha, working as Blacksmith
11. H.K.Panda, working as Electrician
12. B.k.Nayak, working as Vulcaniser

All are working in ARC Charbatia, At/PO-Charbatia,
Dist.Cuttack.

In O.A.No.615/94

- Sum.
1. P.K.Sarangi, now working as Foreman
 2. B.Chakravarthi, now working as Asst.Foreman
 3. M.N.Bhoi, now working as Asst.Foreman
 4. S.K.Ray, now working as Mechanic
 5. J.P.Bose, now working as Mechanic
 6. A.K.Bose, now working as Fitter
 7. N.K.Sarangi, now working as Fitter
 8. P.K.Mohanty, now working as Fitter
 9. B.N.Biswal, now working as Fitter
 10. D.Pati, working as Fitter
 11. J.R.Sahoo, now working as Fitter
 12. P.C.Mohanty, now working as Helper
 13. G.C.Dash, now working as Helper
 14. T.C.Rath, now working as Helper
 15. K.C.Sahoo, now working as Helper
 16. M.Barik, now working as Helper
 17. B.S.Lenka, now working as Helper
 18. Prasanna Ku.Mohanty, Helper
 19. G.C.Sethi, Helper

20. G.M.Mohanty, Helper
21. Kasinath Sethi, Helper
22. N.C.behera, Fitter

All are working in ARC Charbatia, At/PO-Charbatia,
Dist.Cuttack Applicants

Vrs.

IN OA NOS.619 & 615 of 1994

1. Union of India, represented by its Secretary,
Department of Cabinet Affairs, Cabinet Secretariat,
New Delhi.
2. Director, Aviation Research Centre,
East Block,
R.K.Puram, New Delhi.-1100 66.
3. Deputy Director (Administration),
Aviation Research Centre,
At/PO-Charbatia, Dist.Cuttack-754 028 ..Respondents

Advocates for the applicants - M/s C.A.Rao
S.K.behera
P.K.Sahoo.

Advocate for Respondents - Mr.Ashok Mohanty
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These two cases have been heard separately on different dates, but the applicants in these two petitions are almost similarly placed. Their grievances are similar. The reliefs claimed in these two applications are the same. The respondents have filed separate but almost identical counters in these two cases. The points for determination are the same and as such one order is being passed in these two cases.

2. In OA No.619 of 1994, the twelve applicants who are working in different posts in M.V.Workshop in Aviation Research Centre, Charbatia, as Painter, Welder, Carpenter, Turner, Blacksmith, Electrician, etc., have prayed for a direction to the respondents to grant equal pay for equal work at the rate of Rs.1320-2040/- as is given to their counterparts

working in Central Repair Facilities Department, CRF Common Store, R&AW and SSB Departments under the same Directorate. The second prayer is for a direction to the the respondents to finalise the cadre review and to provide promotional avenue by introducing executive cadre in case of the posts held by the applicants within a stipulated time. The third prayer is for a direction for making provision for selection grade in respect of M.V.Workshop cadres of A.R.C.,Charbatia.

2.1 The case of the applicants is that they have been appointed in M.V.Workshop cadre of A.R.C.,Charbatia since 1964 to 1973. All the posts held by them are single isolated posts and there is no promotional opportunity and therefore, these applicants will have to retire on the same posts in which they were initially recruited. The pay scale of these posts is Rs.950-1500/- which is the same as of Drivers in the same organisation. But a Driver can go upto Field Officer's post because there are promotional opportunities for him. There is also no provision for selection grade for the applicants. In spite of a number of decisions of the Hon'ble Supreme Court and Hon'ble High Courts directing for providing promotional avenues no action has been taken by the departmental authorities to provide promotional opportunity to them. The counterparts of the applicants with equal qualification and performing same type and nature of job have been designated as Assistant Field Officers, Deputy Field Officers and Field Officers in other Wings, i.e., Central Repair Facilities Department and Common Stores in the same organisation and also in R&AW and SSB. Those persons are getting the pay scale of Rs.1320-2040/-and 1640-2960/- whereas the applicants while discharging the same duties and with more responsibilities and having the same qualification,

S. Som.

are getting the scale of Rs.950-1500/-. The petitioners have submitted that Aviation Research Centre, C.R.F., RAW and SSB are controlled by the same Secretariat and Directorate. The applicants have stated that the Fourth Pay Commission in paragraph 8.11 of their report noted that there is multiplicity of designation in Government organisation without much regard to the duties and responsibilities of the posts. This has given rise to demands for equality in pay scale of posts which have similar designations, but are in fact not comparable in terms of duties and responsibilities, qualifications, etc.

In view of this, the Fourth Pay Commission suggested that designations of posts may be standardised so that as far as possible their duties and responsibilities may be duly reflected and designations may be uniformly applicable. The Fourth Pay Commission further stated that when this is done, posts carrying a particular designation will have the same scale of pay in all Departments. According to the applicants, in spite of the aforesaid recommendation, the applicants working in M.V. Workshop Cadre of Aviation Research Centre have been discriminated against and have been given lower scale of pay. A number of representations have been submitted by them asking for equal pay for equal work, promotion channel and selection grade. These representations are at Annexures 1, 2, 3 and 4. After getting these representations, the departmental authorities have intimated them that their cases are being considered by constituting a Cadre Review Sub-Committee and on the recommendation of the said Sub-Committee, the cases of the applicants will be taken up for consideration. A series of letters dated 27.10.1989, 8.5.1992, 29.7.1992 and 5.1.1993 conveying this have been enclosed at Annexures 5, 6, 7, 8 and 9. Some of the

S. Som.

13 applicants were deputed to work in the Car Project of A.R.C., Charbatia, where they got designations like A.F.O., S.F.A., A.F.O., D.F.O. and F.O. But in the meantime on 1.7.1994 all of them have been repatriated to their parent posts. The Motor Transport Workshop and M.V. Workshop are under the same workshop cadre. The departmental authorities have only considered the cases of M.T. Employees like Drivers and converted them to executive cadre by allowing higher scale of pay and benefit of promotional channel since 3.8.1994 by changing the designations as Field Assistant, Senior Field Assistant, Assistant Field Officer, Deputy Field Officer and Field Officer. In spite of the assurance given by the departmental authorities, no concrete step has been taken and as such the applicants have come up in this petition with the aforesaid prayers.

2.2 The respondents in their counter have stated that the averment made in the O.A. that there is no promotional avenue at all for the applicants is not correct. Applicant nos. 1 & 5 have been promoted to the higher posts of Painter and Blacksmith, Grade I, with effect from 7.2.1989 and 1.9.1991 respectively. The other applicants could not be promoted for want of vacancies. These applicants were, however, given benefit of higher scale of pay by deputing them to a temporary project for the period from 1986 to 1994. But as the project was closed down, they had to be taken back to their original posts. The respondents have stated that Central Repair Facilities Department is not under the same Directorate. The respondents have denied the assertion of the applicants that their counter-parts in other Departments

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are drawing higher pay even though performing the same duties and having the same qualification. It is further stated that the Fourth Pay Commission have abolished the posts of Selection Grade and therefore, the question of selection grade for the applicants does not arise. The respondents have stated that benefit of stagnation increment as also insitu promotion will be extended to these applicants as and when they become eligible for such benefits. On the promotional prospects, the respondents have stated that a Junior Electrician can be promoted as Electrician and Welder Grade II, Carpenter Grade II and Blacksmith Grade II can be promoted as Welder Grade I, Carpenter Grade I and Blacksmith Grade I. On the claim of same pay as Drivers, it has been stated that Drivers form a separate cadre with different responsibilities and duties and separate Recruitment Rules, and the applicants cannot compare their cases with the Drivers. The respondents have further stated that in response to the representations of some of the applicants, they have been intimated that a Cadre Review Committee has already been constituted to go into the question of restructuring the cadre. The applicants have been informed about constitution of a Sub-Committee of the Cadre Review Committee. This work is in progress. It is further stated that a cadre review was undertaken in respect of Drivers to meet the requirement of the organisation and as a number of posts were available, the promotional avenues existed in the unrevised cadre. As a result of cadre review, certain additional promotional avenues became available. In the M.T. Workshop where the applicants are working there are 79 posts most of which are of isolated nature, a similar exercise will be hard to be achieved notwithstanding the fact that the exercise is in hand. On

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the question of delay in completing the cadre review, it has been stated that two meetings of the Cadre Review Committee have been held and the third meeting is expected to be held in near future. On the above grounds, the respondents have opposed the prayers of the applicants.

2.3 The applicants in their rejoinder have strongly contested the averments that applicant nos. 1 and 5 were promoted to higher posts of Painter and Blacksmith. They have pointed out enclosing copy of the relevant order that applicant no.5 resigned from the post of Carpenter Grade II on 31.8.1971 and has been appointed as Blacksmith Grade I in order dated 10.8.1971. As regards applicant no.1, it has been pointed out in the rejoinder that the statement of the respondents that he was promoted to the post of Painter with effect from 7.2.1989 is incorrect because while he was working as Painter he was posted to a higher post of Assistant Field Officer in order dated 20.1.1987 with effect from 29.6.1986. In other words, on 29.6.1986 he was working as Painter. It has also been mentioned in the rejoinder that the respondents have stated that Central Repair Facilities Department is under the Department of RAW and in turn the RAW is under the control of Director General of Security under whom Aviation Research Centre, Charbatia, also functions. The applicants have further stated that RAW and SSB have also their M.V.Workshops and the counterparts of the applicants in those Workshops are performing the same type and nature of job/duties with the same qualification. But their cadre has been converted into Executive Cadre and designations have been changed to Assistant Field Officer, Deputy Field Officer and Field Officer with higher pay scale, better facilities and better promotional avenue. On the question of party in pay scale, the applicants have further stated

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that in the past inter-Wing transfers have been permitted between A.R.C., S.S.B., C.R.F. and R.A.W. They have also given certain instances of such inter-Wing transfers. They have further stated that some of the persons who were deputed to Car Project, had got higher pay scale and when Car Project came to an end, they were allowed to take voluntary retirement in the posts to which they were deputed and got pensionary benefits in the higher pay scales in the Car Project. ^{They have given} a specific example of Workshop Superintendent, A.R.C., Charbatia, who was deputed to Car Project as Assistant Director. On his return to A.R.C., Charbatia, the post of Workshop Superintendent in A.R.C, Charbatia, was upgraded to that of Assistant Director and pay scale of Workshop Superintendent was increased to that of Assistant Director. The applicants have further stated that in letter dated 21.3.1990 (Annexure-12) the headquarters of A.R.C. have intimated that case of conversion of M.T.Cadres of A.R.C., S.S.B and R & AW into that of executive cadre for which pay scales of pay are already prescribed is presently under Government's consideration. The orders will be uniformly applicable to all these offices. In view of this, the applicants have stated that once the M.T.Cadre has been converted into executive cadre in ARC, Charbatia and also in RAW and SSB, the same thing should be done for the M.V.Workshop in A.R.C., Charbatia, also. They have further stated that for the last ten years, the cadre review is going on and this is nothing but dilatory tactics. On the above grounds, they have reiterated their prayers in the O.A.

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3. In OA No.615 of 1994 the twenty-two applicants are also working in M.V.Workshop in A.R.C., Charbatia. They are Foreman, Assistant Foreman, Mechanic, Fitter and Helper. The applicants' case is that they are holding these posts since 1964 to 1973. These are almost single posts and even though some higher posts are

vacant for quite long period, no steps have been taken to fill up the same. Some of the applicants are working against higher posts but they have not been given the pay scale of higher posts because they have not been promoted. It is further stated that most of them are going to retire in their present posts without getting any promotion. It is further stated that counterparts of the applicants in CRF, Common Store, RAW and SSB are enjoying pay scale of Rs.1320-2040/- and Rs.1640-2960/-. Though the applicants are discharging the same duties and responsibilities, they are getting the scale of pay of Rs.950-1500/-. The applicants have also referred to the recommendation of the Fourth Pay Commission. Their averments on other points are also same as the applicants in OA No.619/94. Besides, it has been stated that the post of Deputy Workshop Superintendent is vacant for more than four years and a Foreman with eight years of experience and with eligibility for promotion is available, but the post is not being filled up. It is also stated that post of Mechanic is a promotional post for Fitter. But surprisingly in M.V.Workshop both the posts carry the same scale of Rs.950-1500/- whereas Mechanic and Fitters are given pay scale of Rs.1320-2040/- in other organisations. These applicants have also mentioned that they had been deputed to the Car Project where they got higher scale and different designations, but again they were repatriated to their parent cadre in the original posts with lower scales. According to them, M.T.Workshop and M.V.Workshop in A.R.C., Charbatia, are under the same Workshop Cadre. But only the M.T.employees have been converted into executive cadre with benefit of higher scale of pay and promotional prospects ignoring the case of the applicants. In spite of several assurances to the applicants in response to their representations enclosed to the O.A., no

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tangible action has been taken. The applicants have referred to the letter dated 23.4.1992 (Annexure-6) in which it has been mentioned that a Sub-Committee for reviewing the workshop cadre has already been constituted and on receipt of recommendation of the Sub-Committee the case of that particular applicant who is applicant no.9 in this O.A. would be further processed. There are similar letters at Annexures 7 and 9. The letter dated 17.6.1994 at Annexure-9 may be noted at this stage. In this, the Assistant Director (Administration), Charbatia, has mentioned that the recommendation of the Cadre Review Sub-Committee has been received and the recommendation of the Cadre Review Sub-Committee will be examined by the Cadre Review Committee and thereafter the matter will be placed before Government for their approval. In view of this, the applicants in OA No.615 of 1994 have come up with the similar prayers for equal pay for equal work, finalisation of cadre review and for getting promotional avenue by introducing executive cadre and provision of selection grade. These prayers are substantially the same as those of the applicants in OA No.619/94.

J. Som.
3.1 The counter filed by the respondents is also on the same lines as the counter filed in OA No. 619 of 1994 except that in this counter it has been pointed out by the respondents that all the applicants except applicant no.4 availed the benefit of promotion while in service at Charbatia. The respondents have stated that the posts held by most of these applicants are isolated in nature and this is the reason for the Department in not being able to promote some of them. Regarding the averment that even when posts were vacant, promotion was not given, the respondents have stated that some of the applicants were sent on internal deputation to the Car Project which

was temporary in nature and anticipating their reversion on conclusion of the Project, the posts were not filled up. They have also stated that action has been taken to initiate the meeting of the D.P.C. to fill up the vacant posts and some of the applicants may come in the zone of consideration for promotion. In any case it has been stated by the respondents that benefit of stagnation increment and insitu promotion would be extended to the applicants as and when they become eligible. On the cadre review, it has been submitted that a Sub-Committee for reviewing the workshop cadre has already given its recommendation which is under examination by the Government. On the question of vacant post of Deputy Workshop Superintendent, it has been mentioned that applicant no.1 became eligible for the post only on 28.6.1994. Had the post been filled up before that according to Recruitment Rules by way of transfer on deputation or by direct recruitment, the applicant could not have been promoted at all. Thus, applicant no.1 has benefited because the post has not been filled up over these years. The respondents have pointed out that the same pay scale of Mechanic and Fitter is as per the recommendation of the Fourth Pay Commission. Other averments regarding selection grade, etc., are the same as in the counter filed in OA No.619 of 1994 and it is not necessary to repeat the same.

3.2 In the rejoinder, the applicants have made more or less the same averments as in the rejoinder filed in OA No. 619/94. They have, however, stated that some of them were working in the Car Project with higher scale of pay. After working for about 8 to 10 years there and drawing higher pay scale, they were suddenly sent back to their original posts with substantial loss of

of emoluments causing considerable hardship to them. In the rejoinder they have also made assertions about commonality with the similarly placed persons working in CRF, Common Store, SSB & RAW under the same Director General of Security. They have also mentioned about transfer from one organisation to another under Director General of Security and have given examples. On the above grounds, they have reiterated their prayers.

4. We have heard Shri C.A.Rao, the learned counsel for the petitioners and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents on these two applications separately on two different dates. In OA No.615/94 the learned counsel for the petitioners has filed written note of submission with a date-chart with copy to the other side and this has also been taken note of. The three prayers of the applicants in these two cases are considered separately and submissions made by the learned counsels of both sides will be taken note of at the time of considering these prayers.

5. In both these O.As., the applicants have sought for a direction to the respondents to make provision of selection grade in view of the fact that there is no promotional prospects for them. For the applicants in OA No.619/94 the respondents have admitted that these are isolated posts and promotional prospect is not there. In respect of the applicants in OA No.615/94 the respondents have taken the stand that there is some promotional prospect and out of the 22 applicants in OA No. 615/94, 14 have got the benefit of promotion during their service career. In view of the fact that the provision of selection grade has been abolished by the Fourth Pay Commission which recommendation came into force with effect from 1.1.1986, there is no case for a direction to the respondents for making provision of

J. Sam.

selection grade for these two sets of applicants. This prayer is, therefore, held to be without any merit and is rejected.

6. The second prayer which flows from the above is provision of promotional avenue. In case of the applicants in OA No.619/94 the admitted position is that there are no promotional avenues for them. With regard to the applicants in OA No.615/94, even though fourteen of them have got some promotion, the respondents have admitted in paragraph 5 of the counter in OA No.615/94 that the posts held by most of the applicants are isolated in nature and this has been the prime reason for the Department's inability to promote them. The applicants have pointed out that promotion facilities have been allowed to the persons working in M.V.Workshop in RAW and SSB by converting their cadre into executive cadre. Even in the same organisation, i.e., A.R.C., Charbatia, Motor Transport Cadre has been converted into executive cadre and new designations have been brought about like Field Assistant, Senior Field Assistant, Assistant Field Officer, Deputy Field Officer and Field Officer. Thereby the persons in the M.T.Cadre, i.e. Drivers can go up to the post of Field Officer. The applicants have further stated that a cadre review is being undertaken for the last ten years, but it has not yet been finalised and in the meantime their counterparts in other organisations under the Director General of Security as also in the A.R.C., Charbatia itself have been converted into executive cadre whereas these applicants in the M.V.Workshop cadre have been discriminated against. From the above, it is clear that admittedly the promotional prospects are not there for the applicants in OA No.619/94 and also for such of the applicants in OA No.615/94 who are holding isolated posts. The respondents have stated that once the

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petitioner become eligible to get stagnation increment and insitu promotion, the same would be given to them. The learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of Dr.Ms.O.Z.Hussain v. Union of India and others, AIR 1990 SC 311. It is not necessary to go into the facts of that case except to note that their Lordships in paragraph 7 of their judgment have pointed out that Hon'ble Supreme Court have on more than one occasion held that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Their Lordships have held that promotion is thus a normal incidence of service. In the facts of that case, it has been mentioned that there is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-Medical "A" Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In the instant case, the respondents have not denied that promotional prospects are there for the M.V.Workshop staff at RAW and SSB and even to M.T.Cadre staff in ARC, Charbatia. In any case, even without bringing in any question of comparability some promotional prospect is required to be provided to these staff who are holding isolated posts. The respondents have stated that a cadre review has been undertaken. We have noted that this review is going on for a long time. In their counter in OA No.615 of 1994 in paragraph 10 it has been mentioned by the respondents that a Sub-Committee for reviewing the workshop cadre had been constituted and the Committee has given its recommendation which is under examination by Government. It, however, appears from paragraph 16 of the counter of the respondents in OA No.619/94 which has been

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filed on the same day as the counter in OA No.615 of 1994 that a Cadre Review Committee is looking into this matter and two meetings have already been held and the third meeting is expected to be held in the "imminent future". This has been mentioned in the counter filed on 6.1.1995. From the letter dated 17.6.1994 which is at Annexure-9 of O.A.No.615/94 it is seen that the Cadre Review Committee will be examining the recommendation of the Sub-Committee before forwarding the proposal to the Government. By 6.1.1995 the Cadre Review Committee had already held two meetings and it was mentioned that the third meeting would be held in immediate future. After that three years have passed, but this Committee has not finalised its recommendation. It was submitted by the learned Senior Standing Counsel that the work is at hand and would be completed shortly. As so much of time has gone and some of the petitioners have alleged that they would be retiring shortly, the respondents are directed to complete the work of cadre review within a period of 2 (two) months from the date of receipt of copy of this order. The departmental respondents should thereafter take steps to obtain orders of Government within a period of 3(three) months from the date of receipt of the recommendation of the Cadre Review Committee. This prayer of the applicants is accordingly disposed of.

7. The applicants have also made a prayer for higher pay scale on the principle of equal pay for equal work. In OA No.619 of 1994 the applicants are in the scale of Rs.950-1500/- and they have asked for the scale of Rs.1320-2040/- which is given to their counterparts in Central Repair Facilities Department (CRF), Common Store and S.S.B. under the same Directorate. In OA No.615 of 1994 the twenty-two applicants are in different scales of pay. They have mentioned that their counterparts doing the

same work in other organisations mentioned earlier are getting the scale of Rs.1320-2040/- and Rs.1640-2960/- and in view of this, they have prayed for a direction to the respondents to grant equal pay for equal work to them as has been given to their counterparts in other organisations which are under Director General of Security. In support of his contention, the learned counsel for the petitioners has relied on the following cases:

- (i) Randhir Singh v. Union of India and others, AIR 1982 SC 879;
- (ii) Federation of All India Customs and Central Excise Stenographers (Recognised) and others v. Union of India and others, AIR 1988 SC 1291;
- (iii) Bhagwan Sahai Carpenter and others v. Union of India and another, AIR 1989 SC 1215;
- (iv) State of Madhya Pradesh and another v. Pramod Bhartiya and others, AIR 1993 SC 286;
- (v) State of Haryana and another v. Ram Chandra & another, 1997(2) SLJ 227.

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It is not necessary to go into the facts of all these cases. The position of law with regard to application of the principle of equal pay for equal work has now been well settled in a series of decisions of the Hon'ble Supreme Court and it is only necessary to briefly recount the law as it is today. In Randhir Singh's case(supra) Hon'ble Supreme Court held that the principle of equal pay for equal work is deducible from Articles 14 and 16 of the Constitution in the light of the preamble and Article

39(d). It was also held that this principle may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. In this decision, the Hon'ble Supreme Court also held that though the principle of equal pay for equal work is not expressly declared by the Constitution to be a fundamental right, it is certainly a Constitutional goal. In the case of **Federation of All India Customs and Central Excise Stenographers (supra)**, the Hon'ble Supreme Court held that equal pay must depend upon the nature of the work done not merely by volume of work but also the qualitative difference regarding reliability and responsibility. It was noted that this involves an element of value judgment, but so long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, then such differentiation will not amount to discrimination. In the case of **Bhagwan Sahai(supra)**, it was held that following the principle of equal pay for equal work allowing higher pay scale to employees of some trades in one grade from an earlier date and giving the same benefit to the members of other trades from a later date would be discriminatory and would be contrary to Articles 14 and 16 of the Constitution as well as fundamental right of equal pay for equal work. In **Pramod Bhartiya's case(supra)** the Hon'ble Supreme Court held that equality of opportunity guaranteed by Article 16(1) necessarily means and involves equal pay for equal work. It was noted that this principle is not a mechanical rule nor does it mean geometrical equality. While applying the principle, emphasis will have to be on similarity of skill, effort and responsibility in duties performed under similar conditions. It was also noted that

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equality of work may vary from post to post and from institution to institution. This reality cannot be ignored or overlooked. It is not a matter of assumption, but one of proof and the burden is upon the persons complaining of discrimination to establish their rights to equal pay or the plea of discrimination, as the case may be. Learned Senior Standing Counsel while opposing the prayer for equal pay for equal work, has relied upon on **Randhir Singh's case (supra)**, the case of Secretary, Finance Department and others v. West Bengal Registration Service Association and others, AIR 1992 SC 1203, and Garhwal Jal Sansthan Karmachari Union and another v. State of Uttar Pradesh and others, AIR 1997 SC 2143. It has been submitted by the learned Senior Standing Counsel that as early as 1982 in **Randhir Singh's case (supra)** the Hon'ble Supreme Court has held that equation of posts and equality of pay are matters primarily for the executive Government and expert bodies like Pay Commission and not for Courts. This view has been followed in the case of **Secretary, Finance Department and others (supra)**, where the Hon'ble Supreme Court observed as follows:

Si. Som .
"It is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. 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 relatives have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well...."

It has also been submitted that in Garhwal Jal Sansthan Karmachari Union 's case (supra) the claim of employees of Jal Sansthan for the same pay scale as had been granted to employees of Jal Nigam was rejected holding that Nigam and Sansthan are two independent body corporates though some of their functions overlap. Jal Nigam has wide jurisdiction over entire State while jurisdiction of Sansthan covers certain local bodies only. It was also noted that duties assigned to employees of Nigam and Sansthan are qualitatively different. On that ground, the claim of employees of Jal Sansthan for equal pay for equal work was rejected. We have considered the submissions made by the learned counsel for both sides on this point. As we have earlier noted, the applicants in OA No.619/94 are working as Painter, Welder, Carpenter, Turner, Blacksmith, Electrician, etc. They are all in the scale of Rs.950-1500/-. The twenty-two applicants in OA No.615/94 are in different levels of hierarchy. Applicant no.1 is a Foreman. Other applicants are Assistant Foreman, Mechanic, Fitter and Helpers. All these applicants are not getting the same scale of pay. They have claimed that their counterparts in Central Repair Facilities Department, Common Store, RAW and SSB under the same Directorate are getting higher scales of pay though they

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are doing the same duties. In Pramod Bhartiya's case(supra) the Hon'ble Supreme Court have clearly stated that plea of equal pay for equal work has to be examined with reference to Article 14 and the burden is upon the persons complaining of discrimination. Therefore, in the instant case, the burden is on the applicants to prove their entitlement of higher scale of pay on the basis of equal pay for equal work. We have noted that while deciding this, the relevant considerations to be taken note of are not only the volume of work but the quality of work, nature of duties, the type of skills which are required for the posts which are said to be comparable. In these two petitions, the applicants have not given any material to enable us to come to a finding that a Painter in Motor Vehicle Workshop like applicant no.1 in OA No.619/94 is doing the same work volumewise as also qualitatively as a Painter in Central Repair Facilities, Common Store and under RAW and SSB. The same applies to the posts of Welder, Carpenter, Electrician, Blacksmith, etc. The same is the case with the applicants in OA No.615/94. Besides stating that their counterparts in other organisations mentioned by them are getting higher scales of pay, they have not indicated anything about relative volume of work performed by persons in different organisations and the quality of work. In any case, even as early as 1982 in Randhir Singh's case (supra) and later on in Secretary, Finance Department and others(supra) Hon'ble Supreme Court have laid down that ordinarily Courts will not enter upon the task of job evaluation which is left to the expert bodies like Pay

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Commission, etc. In view of this, it is not for us to take a view on this prayer of the petitioners. But we note that the Fifth Pay Commission has recently given their recommendation and it will be unfair on the part of the applicants to expect that they will wait for another Pay Commission which may come after another decade during which time most of the applicants may retire from service. In view of this, we dispose of this prayer of these applicants by directing the respondents that while doing the cadre review and providing promotional facilities to the applicant as a result of the cadre review, they should take into account the pay scale enjoyed by the similarly placed persons in RAW, SSB, Common Store and Central Repair Facilities Department, all of which are under the Director General of Security. It is also to be stated that that long ago the Fourth Pay Commission in paragraph 8.11 of their recommendation had suggested standardisation of duties, responsibilities and qualifications and designations of the posts which are comparable in terms of duties and responsibilities and had recommended that after this is done, posts carrying a particular designation will have the same scale of pay in all Departments. It will be difficult, no doubt, to bring about such uniformity in all the Departments of Government of India. But so far as the present applicants are concerned, they are only claiming parity with employees with similar designations in organisations under the same Director General of Security and therefore, at the time of finalising cadre review and obtaining orders thereon, their prayer for equal pay for equal work should also be considered within the time frame indicated by us earlier.

Jdm.

8. In the result, therefore, these Original Applications are disposed of in terms of observation and direction given in paragraphs 5,6 and 7 of this order, but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 16.9.98

AN/PS