

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXXXXX~~

584

1990

DATE OF DECISION 30.10.1990

~~G. A. Jayakumar, D-Man Gds. I,~~ Applicant (s)

CECZ Cochin, Katari Bagh,
Naval Base PO, Cochin & 5 others.

Mr. R. Krishnan Nair

Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)

Secretary, Ministry of Defence,
New Delhi & 2 others

Mr. NN Sugunapalan, SCGC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *N*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

The grievance of the applicants who are working as Drafts-Men in the Military Engineering Service is that despite declaration by the Hon'ble High Court and also by various Benches of the Central Administrative Tribunal that the Draftsmen in the Military Engineering Service (MES) are also entitled to the same pay scale as the Draftsmen in the Central Public Works Department (CPWD), the respondents are denying them the benefit. Their prayer is that the respondents may be directed to pay to the applicants the revised pay scales applicable to the Draftsmen in the CPWD with effect from 1.11.1983. The facts of the case can be briefly stated as follows.

2. The applicants six in number are working as Draftsmen Grade I and II in the Military Engineering Service (MES for short). They joined the service as Draftsmen Grade II on the various days mentioned in Annexure-A and were promoted to the post of Draftsmen Grade I. As per the award of the Board of Arbitration dated 20.6.1980 the pay scales of Draftsmen Grade I, ~~and~~ II and III of the Central Public Works Department (CPWD for short) were revised. On the basis of the award the scale of pay of the Draftsmen Grade I in CPWD was raised to Rs.550-750 and that of for Grade II was raised to Rs.425-700. Employees of the other departments performing similar duties as the Draftsmen Grade I and II of the CPWD requested for extension of the benefit of revision to them also. Government of India issued Annexure-B order dated 13th March, 1984 extending the scales awarded to the CPWD Draftsmen to all Draftsmen in similar grades working in other offices and departments of Government of India provided their recruitment qualifications were similar to those prescribed in ^{the} CPWD. The All India MES Civil Draftsmen Association representing the MES Draftsmen including the applicants, made representations to the third respondent requesting for extension of ^{the} benefit to the Draftsmen in the MES. These representations were rejected by the Government on the ground that the Recruitment Rules of the MES Draftsmen were not similar, ^{that of} to ^{the} CPWD Draftsmen. Aggrieved by such refusal to grant the revised scales, some of the Draftsmen of the MES filed applications before the Central Administrative Tribunal. One Shri Jatindra Kumar Sapui and others filed OA 8 of 1987 before the

Calcutta Bench of the Tribunal. The respondents contested that application mainly on the ground that the Recruitment Rules for Draftsmen in the MES and CPWD were not identical, and that even if they were identical the same scale of pay could not be claimed^{as} a matter of right. Rejecting the contentions raised by the respondents and following the decision in OA 458/86, the Calcutta Bench rejected the contentions directing the respondents to pay the CPWD scales to the applicants therein who were Draftsmen in MES with effect from 1.11.1983. Though the respondents filed Special Leave Petition before the Hon'ble Supreme Court as SLP 275/88 the same was dismissed. In spite of this, when the respondents did not extend the scale of pay of the CPWD Draftsmen to the applicants, the applicants have filed this application under Section 19 of the Administrative Tribunals Act praying that the respondents may be directed to extend the revised scale of pay of the Drafts-
men^{of} CPWD to the applicants with effect from 1.11.1983 and to pay them difference in pay and allowances.

3. In the reply statement the respondents have resisted the application. It is contended that the Recruitment Rules of the Draftsmen in the CPWD and MES are not identical, that even if they are similar or identical that alone would not entitle the applicants to claim equal pay as the CPWD Drafts-
men, that the decisions of the Calcutta Bench mentioned in

the application requires reconsideration since the Hon'ble Supreme Court has in Harbaur Lal and other -Vs- the State of Himachal Pradesh and others reported in 1989(5) SLR page 774 held that doctrine of equal pay for equal work cannot be applied to workmen working in different establishments. It has also been contended ^{even} that ⁱⁿ case the applicants are found to be entitled to the revised scale of pay, they will not be entitled to get the same with retrospective effect ~~with effect~~ from 1.11.1983.

4. We have heard the arguments of the learned counsel on either side and have also perused the documents produced.

5. In Annexure-B order dated 13.3.1984 of the Government of India, Ministry of Defence, it is stated as follows:

"The President is now pleased to decide that ~~the~~ the scales of pay of Draughtsmen Grade III, II and I in Offices/Departments of the Government of India, other than the Central Public Works Department, may be revised as above provided their recruitment qualifications are similar to those prescribed in the case of Draughtsmen in Central Public Works Department. Those who donot fulfil the above recruitment qualification will continue in the pre-revised scales. The benefit of this revision of scales of pay would be given notionally with effect from 13.5.1982, the actual benefit being allowed with effect from 1.11.1983."

The identical question as in this case came up for consideration before the Calcutta Bench of the Central Administrative Tribunal in Jatindra Kumar Sapui and others -Vs-

Engineer - in- Chief (OA 8/87). It is worthwhile to extract paragraphs 8 and 9 of the order of the Calcutta Bench in OA 8 of 1987 which is produced as Annexure-C. It runs as follows:

8. "On the basis of the above findings we allow the application and direct that the CPWD scale of pay for the Grade-I Draftsman Rs.560-750/- should be made applicable to applicants 1, 2, 5, 7, 8, 9, 10 and 12, all Grade-I Draftsmen in M.E.S. Also we direct that scale of pay of Rs.425-700/- be made applicable to applicants 3, 4, 6 and 11 all Grade-II Draftsman in M.E.S. These scales should be made applicable to the respective applicants with effect 1st November, 1983 as has been done in the case of CPWD.

9. It may be noted that we are not making a general order covering all Draftsmen in M.E.S. including the grade-III Draftsmen, as all such employees are not before us in the application. However, we expect that the respondents will apply the principles of the decision as outlines by us above to all such equally affected employees under their control."

Annexure-D shows that the Special Leave Petition No.275/88 filed by the department against the decision in OA 8/87 of the Calcutta Bench of the Central Administrative Tribunal was dismissed. Annexure-8(page-2) is a copy of the order from the Ministry of Defence dated 1.9.1988 to the Chief of Army Staff. It reads as follows:

"Subject: Implementation of Judgement of Central Administrative Tribunal, Calcutta Bench in case No.OA-8/1987.

...

Sir,

I am directed to refer to the judgement dated 17th Sept. 1987 delivered by the Central Administrative Tribunal, Calcutta Bench in case No.OA-8/1987-Shri Jatindra Kumar Sapui & Ors. Versus Union of India and ors and to convey

...5/-

the sanction of the President to the revision of pay scales of the Draftsmen Gde-I and Gde.II of MES with effect from 01st Nov., 1983 as under in respect of the petitioners as per list attached."

The identical question came up before this Bench in PV Baby and 21 others Vs. Union of India and others (OA 55 of 1990). A copy of the judgement in that case is Annexure-E. Relying on the decision of the Calcutta Bench of the Tribunal in OA 8/87 and of the Chandigarh Bench in OA 293/86, this Bench allowed the application and held that the applicants therein who were Draftsmen Grade I and II in the MES should be paid the same scale of pay as the Draftsmen I and II in the CPWD with effect from 1.11.1983 onwards. The contention raised on behalf of the respondents that, even if the Draftsmen of the MES are found to be entitled to the same scale of pay as CPWD Draftsmen, they would be entitled to the same only with effect from 17.1.1986 has been rejected by this Bench. In the face of all these orders of various Benches of the Tribunal, especially when the Special Leave Petition filed against the decision of the Calcutta Bench in OA 8/87 was dismissed, it is futile to contend that the applicants who are Draftsmen Grade I and II in the MES are not entitled to the same scale of pay as the Draftsmen of the CPWD with effect from 1.1.1983. The learned counsel for the respondents brought our attention to the decision of the Hon'ble Supreme Court in Harbaur Lal and others -Vs- the State of Himachal Pradesh Pradesh and others reported in 1989(5) SLR page 774

wherein it was held that the discrimination complained of must be within the same establishment owned by the same management, and that comparison cannot be made with similar employees in other establishments of different management or even in establishment in different geographical locations though owned by the same master, and that unless it is shown that there is discrimination amongst the same set of employees by the same master in the same establishment, the principle of "equal pay for equal work" cannot be enforced. Basing on this dictum the learned counsel counsel argued that the decision of the Calcutta Bench and Chandigarh Bench and this Bench of the Tribunal in earlier cases require reconsideration. Going through the facts of the case, we find that there is absolutely no similarity between the facts of ~~the case of~~ Harbaur Lal's case and the case on hand. In Harbaur Lal's case carpenters working on a casual basis claimed the same wages of regular employees where there was no regular post of carpenters in that establishment. It was in that factual situation that the Supreme Court held that the principle of equal pay for equal work cannot be stretched to compare the wages of regular employees of different status or employees holding similar posts in totally different establishments. Here the MES cannot have different standards and different scales of pay for exactly similar employees for the reason that they are working in different geographical regions. It

cannot also be argued on the basis of the decision cited that the Draftsmen of the MES are not entitled to the scale of pay of the Draftsmen of the CPWD since qualification prescribed for both as per the Recruitment Rules are similar. Therefore, on a careful scrutiny of the facts and circumstances of the case, we are of the view that there is no justification for the decision denying the benefits of the revision of pay scale as claimed by them to the applicants.

6. In the result, we allow the application and direct the respondents to extend the benefit of the revised pay scale of Draftsmen Grade I and Grade II of the CPWD to the applicants according to their respective grades with effect from 1.11.1983. We also direct the respondents to disburse to the applicants the difference in pay and allowances and arrears calculated on the basis of the above said revision. This should be done within a period of three months from the date of communication of this order. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

30.10.1990