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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.422/87.

Shri B.N.Pardeshi.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,
Hon'ble Member(J), Shri T.S.Oberoi.

Appearances:-

Applicant by Shri S.P.Sundarrajan.
Respondents by Shri R.K.Shetty.

JUDGMENT:-

[Per Shri T.S.Oberoi, Member(J)] Dated: 10.8.1990

The applicant who retired on 31st December, 1986 as a Painter, Selection Grade, has filed this Original Application 26.6.1987. His case briefly is that Respondent No.1 issued order vide letter No.3822/DS/O&M/CIV I/84 dated 15th October, 1984 (Annexure - A6) in respect of fitment of non-industrial categories in the pay scales recommended by the Third Pay Commission such as Painters etc. upgrading them from semi skilled in the pay scale of Rs.210-290 to the skilled/highly skilled Gr.I, in the pay scale of Rs.260-350 w.e.f. 15th October, 1984, and the same have been implemented in all Defence Establishments like MES, ASC, EME, Air Force etc. (Annexure A III-V), but Respondent No.3 with whom the applicant was serving at the relevant time, functions under Respondent No.1 and 2 and AG's Branch, did not do so. He therefore, prayed that his post be upgraded as highly skilled Gr.I Painter, in the scale of Rs.380-560 w.e.f. 15th October, 1984, as per the above said order. The applicant also contended that he was the seniormost as Selection Grade Painter, but Respondent No.3 had not implemented the said upgrading, on some pretext or the other, and thus had violated

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Articles 14 and 16 of the Constitution of India by denying the principle of equal pay for equal work, in case of the applicant. His representation to this effect sent to Respondent No.3 while he was in service was declined as per Director General Artillery, Army Headquarters, New Delhi letter dt. 18th December, 1986 (Annexure AVII to the petition). He therefore, prayed for his pay being suitably revised from the relevant date, and his pension and other retiral benefits in accordance therewith, and he be paid the arrears together with interest at 12%.

2. In the counter filed on behalf of the respondents, applicant's case was vehemently refuted, stating that order No.A/10661/2/Arty3 dt. 18th December, 1986, referred to in para 3 of the application, is not applicable to the applicant, and hence the application deserves to be dismissed, on that account alone. They also stated that there was no question of ^{any} discrimination, in the matter of pay scale being granted to the applicant, in terms of the said order, as the same does not apply to him. The question of discrimination would perhaps ~~would~~ have been there, ~~as~~ had any one of his ~~department~~ ^{branch} ~~would have~~ been granted, while the same would have been declined to him. The application was also challenged on the ground of limitation as the same was filed after two years and eight months, or so, having been filed on 26.6.1987, with reference to the order dt. 15.10.1984, issued by the Ministry of Defence with reference to which, he is basing his claim in the present application. They also took up the plea that the provisions contained in the three Government letters at Annexure A-III, A-IV and A-VI to the

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application are applicable to Industrial/Non-industrial posts held by the Military Engineering Service/Electrical and Mechanical Engineering Service and Adjutant General's Branch and not to other branches of the Army. It was further averred by the respondents that post of the Painter held by the applicant was one of the posts under Artillery Branch and the same does not come under the above said branches, to make the applicant entitled for the revision of pay under the said orders.

3. We have heard the learned counsel for the parties. The learned counsel for the applicant pleaded that if the Painters in the MES had been given some grade, there is no reason why an employee of the same category, in another department, be not given the same grade. The learned counsel for the applicant further pleaded that though the applicant had, while in service, represented about this aspect, through Respondent No.3, this has been denied on 18.12.86, vide Annx.A-VII, only stating that Ministry of Defence letter No.3810/DS/O&M/CIV/84 dt. 15.10.1984 is not applicable to other establishments including the one in which the applicant has served, without giving any reasons therefor. This is blatantly a case of violation of the principles of equal pay for equal work, the learned counsel further argued.

4. The learned counsel for the respondents while rebutting the arguments put forth by the learned counsel for the applicant, pleaded that merely nomenclature being the same, does not entitle the applicant to claim the same benefit, as given to Painters and some other categories of posts in the MES and that he should have given adequate details to substantiate his claim and the onus for making out a case squarely lies upon the applicant. Otherwise also,

the learned counsel for the respondents pleaded that it would be too simplifying the issue, as the real demand as per Relief (ii), on page 7 of the application, comes to revision of pay scale, which the Administrative Tribunal cannot do, as it is an intricate matter, which only an expert body like Pay Commission can look into it, with all implications, in relation to the corresponding posts and all other aspects.

5. We have given our careful consideration to the rival contentions as briefly discussed above. We have also perused the contents of the application as well as the counter of the written statement, together with the documents filed thereunder. We have also carefully perused the citations referred to by the parties in support of their respective case.

6. In 1984 SCC (L&S) 329 - Delhi Veterinary Association V/s. Union of India & Ors. - it was inter-alia held that even if Court prima facie finds justification in petitioner's grievance regarding discrimination in pay and claim for equal pay for equal work, court should not take up that question in isolation and undertake to refix the pay scale of the petitioners when the Pay Commission would be taking up the same ^{matter,} ~~method~~ periodically, taking all relevant factors into consideration. Relevant extract in paras 4, 5 and 9 may be profitably reproduced as under:-

"4. Since any alteration in their pay scale would involve modification of the pay scales of officers in the higher cadres in the same department and in the corresponding cadres in the other departments, the work of refixation of the pay scale should not ordinarily be undertaken by the Court at this stage because the Fourth Pay Commission is required to consider the very same question after taking into consideration all the relevant aspects.

5. In addition to the principle of 'equal pay for equal work', the pay structure of the employees of the Government should reflect many other social values. Apart from being the dominant employer,

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the Government is also expected to be a model employer. It has, therefore, to follow certain basic principles in fixing the pay scales of various posts and cadres in the Government service. The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors.

9. In the above situation, we do not feel called upon to decide in isolation the question of discrimination raised before us. This is a matter which should be left to be decided by the Government on the basis of the recommendations of the Fourth Pay Commission."

7. The same view was taken by Gujarat High Court in M.G.Patel V/s. State of Gujarat & Others (1981(1) ASLJ page 436). Further, in 1981(1) LLJ page 59 (Umesh Chandra Gupta & Others V/s. Oil and Natural Gas Commission & Others) while dwelling upon^{on} an earlier judgment of Hon'ble Supreme Court in State of U.P. & Ors. v. J.P.Chaurasia & Ors (1988 III SVLR (L) 243), it was observed: "... the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be differenceⁱⁿ 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. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and

responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

8. As a result of the foregoing discussion, we do not find it possible to accept the present application and the same is accordingly dismissed. In the circumstances, we do not think it necessary to go into the aspect of the application being time barred or otherwise. We also make no order as to costs.

T.S. Oberoi 10.8.90
(T.S. OBEROI)
MEMBER (J)

M.Y. Prickar 10.8.90
(M.Y. PRICKAR)
MEMBER (A).