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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 384/87 199
T.A. NO:

DATE OF DECISION 14.10.1991

Shri S.P. Parchure & Ors. Petitioner

Shri M.S. Ramamurthy

Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri R.K. Shetty.

Advocate for the Respondent(s)


CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman,

The Hon'ble Mr. M.Y. Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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(U.C. SRIVASTAVA)
VICE-CHAIRMAN.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.384/87.

Shri S.P.Parchure, & Ors.

... Applicant.

V/s.

Union of India & ors.

... Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman,
Hon'ble Shri M.Y.Priolkar, Member(A).

Appearances:-

Applicant by Shri M.S.Ramamurthy.

Respondents by Shri R.K.Shetty.

Oral Judgment:-

[Per Shri Justice U.C.Srivastava, Vice-Chairman] Dt.14.10.91.

The applicants belonging to two categories working in the Embarkation Headquarters, Docks Branch Bombay viz. Supervisors (applicants 1 to 21) in the pay scale of Rs.1200-30-1560-EB-40-2040 and Tally Clerks (applicants 22 to 69) in the pay scale of 950-20-1150-EB-25-1500 have invoked the jurisdiction of this Tribunal by means of this application praying that (a) Respondents be directed to allot the applicants in the category of Tally Clerks in the pay scale of Rs.1400-2300 and Supervisors in the pay scale of Rs.1600-2660 and (b) 10% of these two categories in the pay scale of Rs.2000-3200 to which Tally Supervisors be promoted according to seniority and suitability (c) fixation of pay scale be done with effect from December, 1985 viz. the date of enforcement of new scales to Shipping Inspectors of Eastern Railway with reference to IVth Pay Commission report with arrears with effect from 1st January, 1986.

2. The applicants grouse is that they too are Central Government employees but step motherly treatment has been given to them both by Central Government and IVth Pay Commission despite being entitled to be treated on par with comparable categories of employees in other Central

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Government. It has been stated that their duties and responsibilities are identical with the duties and responsibilities discharged by Inspector of Eastern Railway for whom higher pay Scale was recommended by the IVth Pay Commission but for them its report is silent and allotment of same pay scale as of clerks who only perform merely clerical duties treats the workers alike and is discrimination in violation of Articles 14 and 16 of the Constitution of India. According to them educational qualification prescribed for them is same as that of Shipping Inspectors whom higher pay scales have been allotted because only looking to the nature of duties performed and responsibilities shouldered whereas duties performed by applicants of both categories is still more onerous since they have to handle defence cargo/consignment which affects the security of the Country besides handling consignments for other public sector undertaking in the most efficient and devoted manner.

3. The applicants have stated further that in fact Colonel Commandant of Embarkation Headquarters, Calcutta as well as the Army Headquarters strongly recommended the demand of pay scales for Tally Clerks and Supervisors of Embarkation Headquarters on par with Shipping Inspectors of Eastern Railway but it appears that the said demand and recommendation escaped the attention of the Fourth Pay Commission. The Government too according to them has not considered that Tally Clerks and Supervisors also stagnate without any promotion whatsoever and a Tally Clerk takes 20 years to become Supervisor whereafter there is no promotional channel and thereby created few posts in higher pay scale for which there is even some recommendation by the IVth Pay Commission though for Shipping Inspectors to avoid stagnation. The Embarkation

Headquarters at Bombay is the most important and the biggest in the whole Country having a large contingent of Civilian Personnel in addition to Army, Navy and Air Force Personnel. The IIIrd Pay Commission also did not deal with these categories and the Government merely allotted them the pay scales recommended for L.D.C. and U.D.C. and the applicants representations to IVth Pay Commission and the Government remained unheeded.

4. The respondents viz. Union of India and the Department have refuted the claim of the applicants and also have challenged the maintainability of the application and their right to claim relief from this Tribunal. According to them the IVth Pay Commission having applied the revised pay scales of L.D.C. and U.D.C. to Tally Clerks and Supervisors shall be deemed to have conceded their demand. The scale given to the applicants is on All India basis and any disturbance in it would open flood gate of demands and counter demands. Reference to the dispute raised by the Transport and Dockworkers Union claiming to represent certain employees raising a general demand on behalf of all Civilian employees which was disposed of by ~~the~~ Industrial Tribunal vide its award dated 27th August, 1984 against which the Union filed a Writ Petition before the Bombay High Court which is still pending, thus the plea of the respondents is that present application is barred on principles analogous to the principle of res judicata.

5. The applicants who have not disowned the said Union or have pleaded that they were not its members or that they authorise it for it or were interested in the same have stated the question before the Industrial Tribunal was as to whether the Workmen of Embarkation Headquarters Bombay who perform same and similar duties as Dock Workers are entitled to wages and service conditions on par with

other Dock Workers. Although Industrial Tribunal held that these employees were doing the same kind of work as others but in the absence of evidence relief by way of increased wages or better scales of pay on par with Dock Workers cannot be granted. The respondents in that case pleaded that the Civilian employees were Government Servant and Scheme of Wage Board for Port and Dock Workers can not be made applicable to them.

6. The respondents have also made reference to the applications filed by 228 persons including applicants under Section 33(C)(2) of the Industrial Disputes Act before Labour Court on the ground that their duties and responsibilities were the same as those of port and Dock Workers and benefit of scales of pay and allowances to them be extended to the applicants before it. The said application was dismissed being beyond the scope of Section 33-C(2) but has been remanded back again by the Bombay High Court as a Writ Petition filed against the order of Labour Court.

7. The respondents have pointed out the difference in work load of applicants and employees of Bombay Port Trust which is an autonomous body, the difference in working hours and the facilities available to employees of Eastern Railway which is quite different from that of employees working under other Central Government Departments, whose job requirement and staff pattern too is different from that of Railway employees who are governed by different set of rules than that of other Central Government employees. Respondents have pointed out the difference which according to them exists between the duties and responsibilities ^{of} both the categories of

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applicants and the Shipping Inspectors of Eastern Railway which according to them is not identical. The difference in the mode of selection, initial scale and in minimum requisite educational qualification according to the respondents between the two has also been pointed out.

8. The applicants have thus been making effort for higher pay scale and claiming equality not only with the Shipping Inspectors of Eastern Railway but also with Dock workers. They have been claiming benefit of 'equal pay for equal work' and treatment of 'likes and not as alikes'. They raised grievances before the Government and the successive Pay Commission. The Pay Commission did not specifically consider their prayers and the facts so pointed out by them and the Government also told the same line. The refusal either by Pay Commission or Government apart from pleading in the instant case or any other case has not been explicit. If due consideration would have been given and the applicants demand would have been analysed in the light of correct factual position the controversy would have ended much earlier. But so far pay scale and its equalisation is concerned it is to be decided by the expert bodies like Pay Commission, and ultimately by the employer the Government and it is not necessary to make reference to the Judicial pronouncement in this behalf by the highest Court of the Land.

9. The facts as stated clearly indicate that the applicants prayer for promotional avenues and taking them out from the pool of stagnation apparently did not engage the attention of the Government.

10. As a matter of fact the promotion avenue should be open for one who is in service which is the requirement of rather service jurisprudence. In this connection reference may be made to the observations made by the Supreme Court in Raghunath Prasad Singh v. Secretary, Home (Police) Department A.I.R. 1988 S.C.1033 wherein the Supreme Court directed the State of Bihar to provide at least two promotional opportunities to the Officers of the State Police in the Wireless Organisation within six months by amending the rules and made the following observations:

"Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly.

Similar observations were made in the case of Council of Scientific & Industrial Research/v. K.G.S.Bhatt/A.I.R. 1989 S.C. 1972 wherein the employees were left without promotion for 20 years, it was observed "It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress ~~Rax~~ of any organisation. It is an incentive for personnel development as well."


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11. After the post of Supervisors there appears to be no promotion post for Tally Clerks and Supervisors and there appears to be no reason why the Government will not create promotional avenue for them or provide selection grade for them and we trust that within six months the Government will create promotional avenues for selection grade for Supervisors who have come before us through this application. So far as the pay scale is concerned, as has been observed earlier it is undoubtedly squarely a matter which has to be considered by the expert body i.e. Pay Commission and Government. But in this case of the applicants it appears that neither the IIIrd Pay Commission nor the IV th pay Commission specifically considered the demands though they had been agitating the matter. There is no pay Commission now existing and accordingly the Government should consider their demand in the light of the facts stated by them or in the light of facts which have been existing and we hope that this consideration will be done within a period of six months from the date of the communication of the order and the Government will convey the same. However, we make it clear that if in the mean time the Industrial Tribunal before which certain proceedings are pending takes a particular decision which got the binding effect by that time the Government does not take a decision in respect of the pay scale on the direction given by us will not also stand in the way of the Industrial Tribunal to go ahead with the proceedings which before it referred to above. With these observations this application is disposed of finally. No order as to costs.

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~~We have decided~~ this matter and ~~we~~ pass a speaking order, with reference to particularly their Petition dt. 28.11.1986 which was addressed to Additional Directorate General of Movements (Q Mov A) Quarter Master Generals Branch, Army Headquarter and a copy of which has been annexed to this application as Ex. 'J' ^{for} ~~from~~ the retrospective effect ^{that} ~~has~~ been claimed, and a ⁴ ~~parity~~ which has been claimed by the applicants with reference to the duties and responsibilities performed by them, including the ~~parity~~ of scale.


(M.Y. PRIOLKAR)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE-CHAIRMAN.