

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY-400614

TRANSFERRED APPLICATION NOS. 125/86 & 126/86

Tr. App. No. 125/86:
(corresponding to Writ Petition
No. 4577/1984)

Miss. Khatija V. Thanawalla
Cottage Hospital Staff Quarters
Silvassa
Dadra & Nagar Haveli

Applicant
(Original
Petitioner)

V/s.

1. Union of India
through Min. of Home Affairs
New Delhi
2. Administrator of
Dadra & Nagar Haveli
Administration of Silvassa
3. Collector
Dadra & Nagar Haveli
at Silvassa

Respondents

Coram: Honourable Vice Chairman Shri B C Gadgil
Honourable Member(A) L H A Rego

Appearance:

Mr. G S Walia
Advocate
for the Applicant

Mr. S R Atre (for Mr P M Pradhan)
Advocate
for the Respondents

Tr. App. No. 126/86:
(corresponding Writ Petition
No. 4576/1984)

Mr. Subhash Moreshwar Nagaonkar
Cottage Hospital
Silvassa
Dadar & Nagar Haveli

Applicant
(Original
Petitioner)

V/s

1. Union of India
through Min. of Home Affairs
New Delhi

Respondents

LL

2. Administrator
of Dadra & Nagar Haveli
Administration of Silvassa
3. Collector
Dadra & Nagar Haveli
Silvassa

Coram: Honourable Vice Chairman Shri B C Gadgil
Honourable Member (A) L H A Rego

Appearance:

Mr. D V Gangal,
Advocate
for the Applicant

Mr. S R Atre (for Mr. P M Pradhan)
Advocate
for the Respondents

JUDGMENT

Dated: 24.08.1987

(Per: L H A Rego, Member(A))

These two writ petitions were filed in 1984 in the High Court of Judicature, Bombay, which have been transferred to this Tribunal, under Section 29 of the Administrative Tribunals Act 1985 and have been re-numbered as transferred applications. As both these applications are analogous ~~as~~ regards their factual background and the issues required to be determined therein, we propose to deal with them together and dispose them of by a common order. Application No. 125, relates to the equation of the post of Staff Nurse, while Application no. 126, relates to that of a Projectionist, both in the Union Territory of Dadra and Nagar Haveli (D&NH, for short) with the corresponding posts in the Government of India (GOI). The main prayer in these two applications is as follows:

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- i) To quash the impugned order dated 25.8.1973 [Ex. B(ii) and Ex. 'E' respectively by the Chief Medical Officer, D&NH, Silvassa] (CMO, for short), in regard to equation of the posts of Staff Nurse and Projectionist respectively in the said Union Territory (UT, for short), with the corresponding posts in the GOI and consequent fixation of their pay with effect from 6.3.1970.
- ii) To quash Circular dated 19.8.1974 (Ex. C(ii) and Ex. 'K' respectively) of Respondent (R)-2 in regard to fixation of their pay with effect from 1.1.1973, in accordance with the Central Civil Services (Revised Pay) Rules 1973 (1973 Rules, for short) and the amendment of these Rules by the Twelfth (XIIth AR, for short) and the Twentyfifth (XXVth AR, for short) Amendment Rules, both of 1974 and
- iii) To direct the respondents to equate the posts of Staff Nurse and Projectionist, held by the applicants and fix their pay in the grade of Rs. 150-280, with effect from 6.3.1970, in respect of both these posts and further, in the grade of Rs. 425-560 respectively, with effect from 1.1.1973 in accordance with the 1973 Rules and to grant them all consequential reliefs.

2. The chronicle of these two cases in so far as it is relevant for determination of the issues raised before us is briefly as follows. For ease of reference we shall abbreviate the applicants, in Applications Nos. 125 and 126, as A-125 and A-126 respectively.

2.1 A-125 was appointed as a Staff Nurse in the Cottage Hospital, Silvassa in D&NH in the pay scale of Rs. 125-5-145 by Order dated 15.4.1969 of R-3. This pay scale is said to have been prevalent at that time, in the neighbouring Gujarat State, for similar posts and was applied to D&NH, according to Rule 9(3) of the Delegation of Financial Power Rules (Ex. A), framed by the GOI. The respondents state, that the above pay scale was revised to Rs.160-225 by the GOI, under its letter dated 15.12.1970.

2.2 A-126 was appointed as a Projectionist in the Family Planning Section, Silvassa in D&NH, under the CMO, in the pay scale of Rs.160-215, by Order dated 15/18.12.1971, of the Secretary to R-2 (Ex. C). Under Notification dated 28.3.1969 (Ex. F), R-2 had amended the Recruitment Rules for Class-III

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and IV services of the Administration of D&NH in 1966, according to which, the post of Projectionist carried a pay scale of Rs 145-170, which was said to be comparable, for similar posts in the neighbouring Gujarat State and was made applicable to D&NH, as in the case of A-125, according to Rule 9(3) of the Delegation of Financial Powers Rules (Ex. B) framed by the GOI.

3. Both the applicants state, that R-1 initiated action under the GOI, Ministry of Home Affairs Circular letter dated 3.5.1971 (Ex. D in Application No. 126), to equate the posts in D&NH, with the corresponding posts in GOI and in that process, equated the posts of Staff Nurse and Projectionist, in the pay scale of Rs. 110-180, with effect from 6.3.1970 retrospectively, to the detriment of their service conditions. On the basis of the above Circular letter dated 3.5.1971, the CMO passed the impugned order dated 25.8.1973 which reads as under:

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O.O.No.CMO/EST/1043/197
Office of the
Chief Medical Officer
Dadra and Nagar Haveli
Silvassa, Dt.25.8.1973

Read:

1) Ministry of Home Affairs, New Delhi vide their letter No.3/35/70-GP dtd. 3.5.1971 & letter No.3/36-71-GP dtd.10.3.1973 & Administration's endorsement No. ADM/EST/560 dtd.29.5.1973 regarding equation of posts in D&NH Administration with corresponding posts in the central scales of pay.

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I am directed to refer to letters referred above, the Central Pay scales have been fixed as per statement attached herewith, the incumbants who are working in Medical Department, Dadra and Nagar Haveli Silvassa. Necessary entry may

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please be recorded in their service books. The pay fixation have been approved by the Accounts Officer, Dadra and Nagar Haveli, Silvassa.

Chief Medical Officer
Dadra and Nagar Haveli
Silvassa

To
Shri N D Pathak, Sr. Clerk, Cottage Hospital,
Silvassa.

2/- He should prepare the arrears of pay and allowances whatever admissible under the rules.

Copy f.w.cs to the Additional Accountant General, Rajot.

Sd/-
Chief Medical Officer
Dadra and Nagar Haveli
Silvassa."

4. Both the applicants allege, that R-1 arbitrarily and wrongly equated their respective posts in the pay scale of Rs. 110-180 in the GOI. A-125 alleges, that the post of Staff Nurse held by her, was erroneously equated with that of Auxiliary Nurse Midwife, which carried a lower pay scale viz., Rs. 110-180, even though higher qualification was prescribed for the former post, and the responsibility involved in that post was also greater. 9 posts of Staff Nurse and 14 posts of Auxiliary Nurse Midwife, were all equated with one grade viz., Rs. 110-180, regardless of their distinction.

5. A-126 alleges, that the post of Projectionist in other UTs inclusive of Daman, situated barely 25 km away from Silvassa, was equated in the pay scale of Rs. 150-280 in the GOI. This distinction according to him, was invidious and unjust.

6. The pay scales of the various categories of Central Government employees, were revised in accordance with the 1973 Rules and the XIIth AR, pursuant to the

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recommendations of the IIIrd Central Pay Commission (IIIrd CPC, for short) with effect from 1.1.1973. According to Circular dated 19.8.1974 (Ex. C(iii) and Ex. K respectively) R-2 directed all the Heads of Offices in D&NH, to undertake pay fixation of the concerned employees under them, in the light of the instructions therein. Inter alia, it was directed therein, that a form of option should be obtained invariably from every incumbent, prior to pay fixation and that it should be ensured, that no incumbent was left out in the matter of pay fixation. The Heads of Offices were further directed to point out, with due justification, the categories of posts, which were either omitted or for which, the revised pay scale was not adequate. A-125 is seen to have exercised her option on 31.7.1973, electing the revised pay scale of the post of Staff Nurse, with effect from 3.5.1971. Her existing pay scale in that post, was shown as Rs. 110-3-131-4-155. A-126 is seen to have exercised his option on 24.9.1974, electing the revised pay scale of the post, with effect from 1.1.1973. His existing scale of pay was shown as Rs. 110-3-131-4-155-EB-4-175-5-180. The forms of option used in either case do not appear to be identical. The post held by A-126, does not seem to have been indicated in the form of option. While A-125 is seen to have exercised her option as above, before the CMO, there is no such mention in the form of option exercised by A-126. Besides, in the case of A-125, the revised scale of pay was to take effect from 3.5.1971, while in the case of A-126, this date was 1.1.1973. These forms of option were produced by the Counsel for the respondents, in the course of hearing of these two applications.

7. A-125 has annexed to her application a xerox copy, of an incomplete printed statement under the

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caption: "Sub Section 24. DIRECTORATE OF HEALTH SERVICES" [Ex. C(i)], wherein, the pre-revised and revised scales of pay for the posts of Staff Nurse, Auxiliary Nurse Midwife, and Midwife, are indicated as below, under Class-III posts.

Sr.No. of the Statement	Designation of post	Scales of pay	
		Present Rs.	Revised Rs.
21	Staff Nurse	150-280	425.640
52	Auxiliary Nurse Midwife	110-180	260.350
53	Midwife	110-180	260.350

It is not clear therefrom, as to, to which particular UT, or other area, the above pay scales pertain. We could not obtain from the respondents too, an authentic copy of the above printed Statement in its entirety, to help examine its relevance and applicability to the case before us.

8. A-125 states, that the above revised pay scale of Rs 425-640, has been made applicable under the 1973 Rules to the post of Staff Nurse in other UTs including Daman, which is situated barely 35 km~~g~~ away from Silvassa. She therefore submits, that as Staff Nurse, she is entitled to a higher scale of pay, than the Auxiliary Nurse Midwife but is drawing a lower scale of pay (prescribed for the latter post) even after the pay scales were revised under the 1973 Rules.

9. A-126 states, that consequent to revision of pay scales of the Central Government employees, according

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to the 1973 Rules, with effect from 1.1.1973, the pay scales for the post of Projectionist, was revised as Rs. 330-560. In this regard, he refers to Ex. J of his application, which seems to be an incomplete xerox copy of a printed Statement, under the caption "Sub-Section 24 - DIRECTORATE OF HEALTH SERVICES". We could not obtain a complete authentic copy of this statement, from the respondents, to help examine its relevance and applicability to the case before us. Scrutiny of this Statement reveals, that the post of Projectionist held by A-126, does not appear therein. A-126 however clarified, that the post of Projectionist was equivalent to that of a Movie Operator, being alike in the nature of duty and the responsibility involved. The pre-revised and the revised scales of pay as indicated at Sr. No. 37 of the above Statement in respect of the post of Movie Operator, are as follows:

Sr.No. Particulars		Scales of pay (Rs.)
1	Pre-revised	150-280
2	Revised	330-560

10. However, instead of the revised pay scale of Rs. 330-560, a lower pay scale of Rs. 260-400 was made applicable to the post of Projectionist in the D&NH, according to Circular dated 19.8.1974 from R-2 (Ex. K) and XIIth AR, its annexure.

11. Both the applicants allege, that grant of a lower scale of pay to them, despite the above facts, is violation of Articles 14 (equality before law) 16 (equality of opportunity in public appointment) and 39(d) (equal pay for equal work) of the Constitution.

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12. The applicants state, that they made several representations to the concerned authorities for redress but to noavail, even though R-2 and R-3 had recommended parity in their pay scales, as compared to their counterparts elsewhere. R-1 is seen to have informed the CMO on 29.4.1983 (Ex. O and V respectively), that the proposal to bring parity in the pay scales, was examined by the Union Finance Minister but as the appointment of the IVth CPC was on the anvil, it would be appropriate to pursue the matter with that Commission, instead of processing individual cases and that the proposal be deferred for the present.

13. R-2 is seen to have written to the GOI on 13.6.83 (Ex. Q and Ex. X respectively) urging early revision of the pay scales, of the concerned posts in the D&NH, without linking the matter with the IVth CPC, on account of administrative and other difficulties.

14. The applicants refer to the publication of the Provisional Gradation List of Technical Staff, under the CMO, as on 1.1.1984, by R-3, under his memoranda dated 9.1.1984 (Ex. I) and dated 9.3.1984 (Ex. AA), wherein they state, that their respective posts were wrongly equated in the pay scale of Rs 110-180 with effect from 6.3.1970, with reference to the pay scale drawn by them earlier, as applicable to comparable posts, in the neighbouring Gujarat State. Furthermore, they state, that this erroneous equation persisted, when their pay scales were again revised under the 1973 Rules with effect from 1.1.1973.

15. A-126 is seen to have filed Civil Suit No.14 in the Court of the Civil Judge of D&NH at Silvassa in 1974, praying mainly, that he be declared as entitled,

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to a pay scale of Rs. 330-560, with effect from 1.1.1973 and paid the arrears of Pay and Dearness Allowance, corresponding to this scale of pay. This suit however was dismissed by the Learned Civil Judge, on 7.9.1982.

16. Since both the applicants did not succeed in securing the relief desired despite all effort, they filed writ petitions in the High Court of Judicature of Bombay in 1984, which are now transferred to this Tribunal and are before us for consideration.

17. Shri G S Walia and Shri D V Gangal appeared as Counsel for A-125 and A-126 respectively while Shri S R Atre as Counsel for the respondents, on behalf of his senior Shri P M Pradhan. We heard the matter at length from 29.7.1987 to 31.7.1987 and examined carefully the rival contentions and the documentary evidence and other material placed before us.

18. Shri Atre, Learned Counsel for the respondents, questioned at the outset, the very maintainability of these applications, as he submitted, that the applicants were challenging fixation of pay based on the acceptance of the recommendations of the IIIrd CPC. He contended, that the cause of action for the applicants had arisen, as long as nearly a decade before the applicant had filed their writ petitions, in the High Court of Judicature, Bombay, and therefore pleaded, that the applicants were flagrantly hit by laches and consequently were not maintainable.

19. The applicants were required to exercise their option in accordance with the instructions contained in Circular dated 19.8.1974 (Ex. 'C' (ii) and Ex. 'K'

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respectively) from R-2 under the 1973 Rules and the XIIth AR ^{ER} ~~was~~ notified on 29.6.1974 and the XXVth AR on 30.12.1974. The pay scale of the Staff Nurse in D&NH, was revised from Rs. 110-155 to Rs. 260-350. It is therefore not clear to us, as to how A-125 could have opted the scale of pay on 31.7.1973 i.e., prior to 19.8.1974 and 30.12.1974. Shri Atre did not show us any option exercised by A-125 in regard to her scale of pay after 30.12.1974. It is therefore apparent, that she was not afforded an opportunity, to exercise her option in regard to her pay scale under the 1973 Rules, as revised under the XXVth AR. Besides, according to letter dated 3.5.1971 from R-1 [Ex. 'B' (i)], the post of Staff Nurse in D&NH, does not seem to have been equated with an appropriate post in the Central scales of pay. We are not shown any orders from R-1, whereby this omission was rectified as purported, in para 3 of the aforesaid letter dated 3.5.1971 from R-1, except that in the XXVth AR notified on 20.12.1974, the existing pay scale of this post shown as Rs. 110-155 was revised to Rs. 260-350. A-125 was drawing a pay scale of Rs. 160-225 as from 15.12.1970, as revised by the GOI, as stated by the respondents. The post of Staff Nurse held by her, was not equated with any appropriate post in the Central scales of pay as mentioned earlier. She does not seem to have been given an opportunity, to elect her pay scale under the 1973 Rules, read with the XXVth AR. It is therefore not clear to us, as to on what basis, the present scale of pay of the post of Staff Nurse held by her in D&NH, was shown as Rs. 110-155 in the Schedule to the XXVth AR, as notified on 30.12.1974 and the revised scale of pay, as Rs. 260-350. Shri Atre counsel for the respondents could not elucidate the same.

20. As regards A-126, the scale of pay viz., Rs. 160-265, in the post of Projectionist, drawn by him,

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from December 1971, was equated with the pay scale of Rs. 110-180, as corresponding to the Central scale of pay applicable from 6.3.70, according to the letter dated 3.5.1971 (Ex 'D') from R-1.

21. Both the applicants had repeatedly represented to the concerned authorities for parity in their pay scales, as compared to their counterparts in other UTs. R-2 and the CMO had recommended their case to R-1 more than once, from 1972 onwards. The response of R-1 thereto however, was not firm and positive, as after eliciting certain details from R-2, the result was that, R-2 was advised, that the matter be taken up with the IVth CPC. R-2 had even pleaded with R-1, not to link the matter with this Commission, as this would entail inordinate delay and consequently aggravate the administrative difficulty faced in D&NH. This protracted correspondence seems to have continued as late as till 1983, leaving the applicants almost in beguiled expectation, in regard to their scale of pay.

22. With regard to the question of laches and delay on the part of the applicants, on account of which Shri Atre contends, that the applicants are not maintainable, it is pertinent to examine the ruling of the Supreme Court, in R S DEODHAR & ORS. V STATE OF MAHARASHTRA & ORS (AIR 1974 SC 259) which reads as under:

"The rule which says that a Court may not inquire into belated or stale claims, is not a rule of law but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule, that whenever there is delay, the Court must necessarily refuse to entertain the petition. The question is one of discretion, to be followed, in the facts of each case."

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The facts discussed above reveal, that the applicants had repeatedly represented the matter, to the concerned authorities for redress, and that R-2, R-3 and the CMO, had more than once, recommended their case to R-1, for parity in pay scales, as compared to their counterparts in other UTs and that R-1 had not taken a firm and positive decision thereon. A-125, was not given due opportunity to exercise a proper option in regard to her pay scale, as brought out in the foregoing. We feel that these extenuating circumstances, merit consideration and therefore, we do not deem it fair and proper, to hold the applicants answerable for delay and laches in this case, as contended by Shri Atre and to reject their applications in limine, on that ground. We therefore turn down this preliminary objection raised by Shri Atre.

23. Shri Atre next raised the question of res-judicata, against A-126, on the premise, that he had filed Civil Suit No. 14, in the Court of the Civil Judge, of D&NH at Silvassa in 1979, where the parties were the same inter se, and the prayer identical, but this suit was dismissed. Besides Shri Atre submitted, that the matter was decided by a competent court and A-126 had not appealed thereon to the High Court. He therefore urged, that A-126 was barred ^{de by} ~~as~~ res judicata and could not reagituate the same matter, before this Tribunal.

24. Countering the above argument, Shri Gangal pleaded, that though the above civil suit was dismissed, the Learned Civil Judge had held, Issues 2 and 3 relating to entitlement of pay scale and equation of the posts of Projectionist and Extension Officer in favour of

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his client. Relying on the ruling of the Supreme Court in KIRITKUMAR CHAMANLAL KUNDALIYA V. UOI (AIR 1981 SC 1621), Shri Gangal contended, that though the learned Civil Judge, D&NH Silvassa, had dismissed the suit, he had held, it substantively in his favour. He further argued, that Part III of the Constitution relating to enforcement of fundamental rights, was not justiciable before the subordinate courts.

25. The Supreme Court observed as follows, in the KUNDALIYA case referred to by Shri Gangal.

"The doctrine of finality of judgment or the principles of res judicata, are founded on the basic principle, where a court of competent jurisdiction, has decided to issue the same ought not be allowed to be agitated again and again. Such a doctrine would be wholly inapplicable to cases where two forums have separate and independent jurisdiction. The doctrine of res judicata or the principles of finality of judgment cannot be allowed to whittle down or override the express constitutional mandate of the Supreme Court, enshrined in Article 32 of the Constitution."

26. We have seen the judgment of the learned Civil Judge, D&NH Silvassa in this case, which was delivered by him on 7.9.1982. It is true that A-126 had agitated more or less the same matter before that forum and though prima facie, it might appear, that the bar of res judicata might apply, we feel that in the circumstances narrated in paras 21 and 22 supra, which reveal that A-126 was given to understand by the respondents, that his case was being considered. We feel in the interest of justice and fairness, a strictly legalistic view may not be taken, as regards res judicata in this case, and therefore we negate the contention raised by Shri Atre in this behalf.

27. Sarvashri Walia and Gangal, Counsel for A-125 and A-126 respectively, focussed the main thrust of their attack, on the doctrine of "equal pay for equal

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work", as enshrined in Articles 14 and 16 of the Constitution and in doing so, relied on a catena of decisions of the Supreme Court as under, the ratio of which, in so far as they have a bearing on the two applications before us, is indicated against each.

(i) RANDHIR SINGH V. UOI & ORS [1982(i) SC 490 AIS LJ]

"Equal pay for equal work", though not expressly declared by the Constitution to be a fundamental right, is certainly a constitutional goal. This principle, needs to be properly applied to cases of unequal scales of pay, based on no classification or irrational classification, though those drawing different scales of pay, do identical work under the same employer.

(ii) D.S. NAKARA & ORS V. UOI (1983 SEC (L&S) 145)

"Classification and sub-classification must be for a valid purpose, overclassification may be hit by Article 14 of the Constitution. Article 14 strikes at arbitrariness, because, any action that is arbitrary must necessarily involve negation of equality. Classification therefore, must satisfy the twin tests of classification being founded on intelligible differentia, which distinguishes persons or things, that are grouped together, from those that are left out of the group, and that differentia must have a rational nexus to the object sought to be achieved.

(NB: This was in the case of the Non-Contributory Retirement Pension Scheme for pensioners).

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(iii) P. SAVITA & ORS V. UOI & ORS (AIR 1985 SC 1124)

"Higher salary for one group of Senior Draughtsmen recommended only on seniority-cum-fitness basis, was violative of Article 14 of the Constitution, where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently.

(iv) SURINDER SINGH & ANR V. THE ENGINEER-IN-CHIEF CPWD & ORS (AIR 1986 SC 584)

Persons employed on a daily wage basis in CPWD, are entitled to same wages, as other permanent departmental employees performing identical work. The doctrine of "equal pay for equal work", is not an abstract doctrine and can be enforced in a Court of Law and casts a duty on Government, to function like a model and enlightened employer.

(v) DHIRENDRA CHAMOLI & ANR V. STATE OF U.P. (ATR 1986 SC 172)

Article 14 of the Constitution enjoins equality before law and equal pay for equal work. The casual employees in the Nehru Yuvak Kendra, in so long as they perform the same duties must be entitled to the same salary and conditions of service as the Class-IV employees.

(vi) P.K. TANEJA & ORS V. UOI & ANR (ATR 1986 (2) CAT 79)

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Equal work calls for equal pay. In the case of Senior Draughtsmen, grant of a higher scale of pay for one group purely on seniority-cum-fitness basis, resulted in an arbitrary classification which was unsustainable and violative of Article 14 of the Constitution.

27. Before we examine the claim of the applicants for parity in their pay scales, as compared to their counterparts, in the other UTs, it would be helpful to know the genesis and the background to the revision of pay scales from time to time in D&NH, since its inception, Para 2, of Chapter 46, on "Union Territories" in the Report of the IIIrd CPC reveals that in May 1970, the Administrators of the UTs, were informed of the following decisions:

- i) UTs of Delhi, Goa, Dadra, Diu and Daman and Andaman and Nicobar Islands and Laccadive, Minicoy and Amindivi Islands which continue to remain on the Central pattern,
- ii) The employees of D&NH will be given the benefit of the revised Gujarat pattern from 1.6.1967 and will be given the option to have the Central pattern with effect from 6.3.1978.

28. Para 3 of the above Report of the IIIrd CPC reveals, that UT employees of Delhi, Goa, Daman & Diu; Pondicherry; Dadra & Nagar Haveli; Andaman & Nicobar Islands, were on the Central pattern of pay and allowances as at the time the said Report was drawn up. The broad approach of the IIIrd CPC, in recommending the pay scales to the UT employees was - vide para 15 of its Report - that for those posts which were also to

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be found generally in the Departments of the Central Government, the appropriate Central scales of the pay, recommended by the IIIrd CPC be straightaway extended. For such of the remaining posts, as were peculiar but common to all the UT Administration, the IIIrd CPC had after a broad assessment, recommended common scales of pay. Only in respect of the posts which were peculiar for a particular UT, the IIIrd CPC found it necessary, to suggest special scales of pay, taking duly into account, the duties and responsibilities attached to these posts.

29. As regards nursing staff, the IIIrd CPC - vide paras 62 and 63 of its Report - proposed a pay scale of Rs. 425-640, against the existing scale of Rs. 150-280. For certain posts of Nurses, carrying the pay scales of Rs. 110-155 and Rs. 125-155, it proposed a revised pay scale of Rs 330-480 for the latter, as Matriculation with 'A' Grade Certificate, was a pre-requisite, for these posts and a pay scale of Rs. 260-350 was proposed for the former. However, we find no mention in this Report, in regard to the post of Projectionists in the Medical and Public Health Department.

30. Against this background, it is necessary to ascertain the details in regard to the following, namely:

- i) as to whether, in point of the nature of duties and responsibilities involved and the qualifications prescribed, the posts of Staff Nurse and Projectionists in D&NH were equivalent to those in other UTs, and

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- ii) the pay scales sanctioned for these posts for other UTs under the 1973 Rules and for the period immediately anterior to them.

31. As regards para 30(i) supra, Counsel for both the applicants averred, that the nature of duties and responsibilities involved in the respective posts viz., that of Staff Nurse and Projectionist and the qualifications prescribed for the same, were identical, to similar posts in other UTs and, therefore, urged that in keeping with the principles of equality enshrined in Articles 14 and 16 of the Constitution, their clients should in regard to their pay scales, be brought on par with their counterparts holding similar posts in other UTs.

32. Shri Atre sought to repel this plea, relying on the decision of the Supreme Court in the following case viz., DELHI VETERINARY ASSOCIATION V. UOI & ORS (AIR 1984 SC 1221)

"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, 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 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."

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33. Based on the parameters indicated in the above dicta of the Supreme Court, Shri Atre sought to distinguish the posts of Staff Nurse and Projectionist in D&NH, from those posts similarly designated in other UTs and contended, that mere similarity of designation of the posts in question, should not lead to infer, that the said posts in D&NH, were wholly identical with the posts similarly designated in other UTs, regardless of the parameters outlined in the aforesaid dicta of the Supreme Court. On being asked to spell out concretely, as to in what respect, with reference to the above parameters, the posts of Staff Nurse and Projectionist were inferior to those in other UTs, for which higher pay scales were sanctioned, Shri Atre was unable to give a satisfactory answer. In fact, the Respondents have been rather cryptic in their reply to the application in this regard - vide paras 6 and 9 of Application No. 125 and paras 6 and 11 of Application No. 126. Except for a bald statement, that the scales depend upon local conditions and therefore vary in each of the UTs, the Respondents have not pin-pointed the disparities, if any, in regard to the posts of Staff Nurse and Projectionist, with reference to the parameters indicated in the Supreme Court, in the above case relating to THE DELHI VETERINARY ASSOCIATION. Counsel for the respective applicants affirmed, that the nature of duty and responsibilities involved in either of these two posts and the qualification and method of recruitment prescribed were identical, as compared to similar posts in other UTs. We have observed earlier that R-2 and R-3 and the CMO, had more than once recommended to R-1, parity in pay scales for these two posts, as compared to similar posts in other UTs and in fact, R-1 seems to have been inclined to reconsider the matter, but instead of taking a decision expeditiously, preferred to get the matter resolved through the IVth CPC.

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34. We are informed by Shri Atre, that in the Directorate of Health Services (All India Cadre) (DHS, for short) and UT of Goa (as it then was) the pay scales for the posts of Staff Nurse and Projectionist prior to the 1973 Rules and thereafter, until 1985 and from 1986 (when pay scales were revised according to the IVth CPC) were as below:

Sr. No.	Post	Period	Pay Scales (Rs.) in	
			DHS	UT of Goa
1)	Staff Nurse	Prior to 1973	150-280③	150-280
		From 1973 to 1985	425-640	425-640
		From 1986	1400-2600	1400-2600
2)	Projectionist	Prior to 1973		
		From 1973 to 1985		*330-560
		From 1986		*1200-2040

NB: *Pertains to the comparable post of Movie Operator, there being no post of Projectionist.

35. As against the above, the pay scales of the applicants, prevalent for these two posts in D&NH at different periods, were as under - vide para 2 supra.

Sr.No.	Category of post	Pay scales(Rs.)	
1)	Staff Nurse	i)	Rs. 125-5-145 from 15.4.1969 to 14.12.1970 as prevalent in the neighbouring Gujarat State for similar posts.
		ii)	Rs. 160-225 as revised by GOI from 15.12.1970.
		iii)	Rs. 260-350 under the 1973 Rules read with XIIth and XXVth AR with effect from 1.1.1973.
		iv)	Rs. 950-1500 according to the IVth CPC.

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Sr.No.	Category of post	Pay scales (Rs.)
2)	Projectionist	i) Rs.145-170 from 28.3.1969 on par with similar post in the neighbouring State of Gujarat. ii) Rs.160-265 from 18.2.1971 according to Ex. 'C'. iii) Rs.110-180 with effect from 6.3.1970 according to equation of posts - <u>vide</u> letter dated 3.5.1971 (Ex. 'D') by R-1. iv) Rs.260-400 with effect from 1.1.1973 under the 1973 Rules read with the XIIth AR. v) Rs.950-1500 according to the IVth CPC

36. Under the 1973 Rules, read with XIIth AR and the XXVth AR, the present scales of pay indicated in respect of the posts of Staff Nurse and Projectionist in D&NH, are as below:

Sr.No.	Category of post	Present scale of pay (Rs.)
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1)	Staff Nurse	110-155
2)	Projectionist	110-180

37. It is not clear, as to how in the case of A-125, the present scale of pay was shown as Rs.110-155, when the post of Staff Nurse in D&NH, was not equated with an appropriate post in the Central scale of pay, according to letter dated 3.5.1971 from R-1 (Ex. 'D' in A-126) - vide para 19 supra. Besides, she does seem to have exercised option in regard to the pay scale under the 1973 Rules as amended.

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38. Both A-125 and A-126 were drawing higher scales of pay in the respective posts initially, as compared to their counterparts in Goa - vide paras 34 and 35 supra. Shri Atre has not been able to indicate to us, as to in what manner, the posts of Staff Nurse and Projectionist in D&NH were inferior to those in Goa and to similar posts in other UTs, with regard to the parameters outlined in the dicta of the Supreme Court in the case relating to the DELHI VETERINARY ASSOCIATION vide para 33 supra. R-2, R-3 and the CMO have more than once, pleaded with R-1, for parity ⁱⁿ ~~of~~ pay scales for these posts, as compared to similar posts in other UTs. The CMO who is the highest technical head of the applicants in D&NH, while recommending this parity, seems to have been guided by the consideration, that the posts of Staff Nurse and Projectionist, were on all fours, identical with similar posts in other UTs, in terms of the parameters outlined in the aforementioned case, relating to the DELHI VETERINARY ASSOCIATION.

39. Counsel for both the applicants, referred to the judgment of this very Bench of the Tribunal, passed on 22.12.1986, in Applications Nos. 90 to 97 of 1986 (Transferred from the High Court of Judicature, Bombay) wherein, the applicants who were holding various posts as Trade Instructors, in the Industrial Training Institute at Silvassa in D&NH, were given the benefit of the higher pay scale (as enjoyed by their counterparts) on the principle of "equal pay for equal work".

40. Shri Atre contended, that if the applicants were given the higher scale of pay, as prayed by them on parity with similar posts in other UTs, this would distort the entire pay-structure in the hierarchy in the

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Medical and Public Health Department of D&NH, leading to an anomalous position, to illustrate which, he cited the case of the post of Sister (which was a post of promotion immediately next to that of Staff Nurse in D&NH) carrying a revised pay scale of Rs.425-640, under the 1973 Rules, being equated with the subordinate post of Staff Nurse. He also pleaded that the Tribunal should not arrogate to itself, the function of the Pay Commission, in adjudicating a matter relating to pay structure of various posts.

41. Shri Atre has not been able to convince us, as to why the posts of Staff Nurse and Projectionist in D&NH, have been discriminated against, as compared to posts in other UTs, when they are found to be identical in all respects, in terms of the various parameters spelt out in the case of the DELHI VETERINARY ASSOCIATION referred to above. The Administration of D&NH have strongly recommended these posts, for parity in pay scales with similar posts in other UTs. The IIIrd CPC has clearly stated in para 10 of its Report, that it recommends a common scale of pay for posts, which are common to all UT Administrations. We have pointed out above, that it has not been explained satisfactorily to us, as to how these two posts of Staff Nurse and Projectionist in D&NH, came to be equated on a lower pay scale, as compared to similar posts in other UTs.

42. Shri Atre took the plea, that the two applicants having once exercised their option, for the scale of pay revised under the 1973 Rules, they cannot now resile from that option. His contention does not carry conviction, when he has not been able to enlighten to us, as to in what respect, the posts of Staff Nurse and Projectionist, are inferior to that of similar posts in other

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UTs in terms of the parameters, spelt out in the case of DELHI VETERINARY ASSOCIATION, which he himself had cited in support. A-125, as stated earlier, had not been given the opportunity to opt the revised pay scale, under the 1973 Rules as amended and the post of Staff Nurse held by her, was also not equated according to the letter dated 3.5.1971, from R-1 (Ex. 'D' in Application No. 126). R-1 had not made up its mind on the repeated representations of R-2 and R-3, but had only protracted the matter, by linking it up to the IVth CPC, leading us to infer, that it was inclined to reconsider the same.

43. In our view, the doctrine of "equal pay for equal work" applies aptly to these two applicants, in the light of the facts and circumstances dwelt upon by us at length, in the foregoing and of the catena of rulings cited by the Counsel, for both the applicants - vide para 27 supra - as also the Supreme Court ruling in the case pertaining to the DELHI VETERINARY ASSOCIATION, relied upon Shri Atre which ironically, goes against the respondents themselves. As for the contention of Shri Atre, that restoration of parity in pay scales, to the applicants, as compared to similar posts in other UTs (with due regard to the prescribed norms and parameters) would distort the pay-structure of the relevant cadres in the Medical and Public Health Department, in D&NH, it is regardless to exhort that: one wrong does not justify another - {injuria non excusat injuriam} - and that nothing is lawful, which is contrary to reason - nihil quod est contra rationem est licitum.

44. In the result, we make the following order.

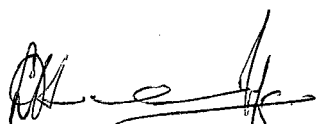
ORDER


- 1) We quash the impugned order dated 25.8.1973 passed by the CMO, in regard to equation of the posts of Staff Nurse and Projectionist

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in D&NH, with the corresponding posts in the GOI and consequent fixation of pay of the applicants, with effect from 6.3.1970, or from the date the applicants joined duty, whichever is later.

- 2) We quash Circular dated 19.8.1974 of R-2, in regard to fixation of pay of the applicants, with effect from 1.1.1973 under the 1973 Rules, as amended.
- 3) We direct the respondents to equate the posts of Staff Nurse and Projectionist held by A-125 and A-126 respectively and fix their pay, in the grade of Rs. 150-280 with effect from 6.3.1970 and 18.12.1971 and further, in the grade of Rs. 425-640 and Rs. 330-560 respectively, with effect from 1.1.1973, in accordance with the 1973 Rules as amended, and to grant them all consequential relief after adjusting the salary paid to them earlier, as also the salary paid to them in pursuance of the recommendations of the IVth CPC.
- 4) This order be complied with, expeditiously say within a period of 3 months, from the date of its receipt.
- 5) No order as to costs.


(L H A Rego) 24.8.1987
Member (A)


(B C Gadgil)
Vice - Chairman