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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 278/89

~~Ex-Amt No.~~

198

DATE OF DECISION 27-6-1991

S.J. PAWAR & OTHERS Petitioner

SHRI S NATARAJAN Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS Respondent

SHRI BENDRE (FOR SHRI P M PRADHAN) 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 ?



VICE CHAIRMAN

(18)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

O.A. 278/89

S J Pawar & Ors .. Applicants

V/s.

Union of India .. Respondents

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

APPEARANCES:

Shri S. Natarajan  
Advocate  
for the applicant

Shri BENDRE (for  
Sri P M Pradhan)  
Counsel for the  
Respondents

JUDGMENT

DATED: 27/6/91

(PER: Justice U C Srivastava, Vice Chairman)

The applicants 1 to 9 who were ex-service men from the Defence service as Radio Mechanic Trade were reemployed to the post of Radio Technicians as Direct recruits since 1975 in the Communications Wing of the Customs and Central Excise at Pune, Goa and Bombay. The Recruitment Rules for the post of Radio Technicians were published vide notification dated 13-11-1978. The said recruitment rules provide that the said post of Radio Technicians would be classified as General Central Service Group 'C' Non-Gazetted, Non-Ministerial and that educational and other qualifications required for Direct Recruitment was :

1. Diploma in Radio Technology/Telecommunication Engineering
2. Ex-Servicemen from Defence services of Radio Mechanic trade with 10 years of service.
3. Recruitment rules further provide that the scale of pay applicable to the said posts of Radio Technicians as under:

Rs.425-15-500-EB-15-560-20-700 (for diploma holders)

Rs.380-12-500-EB-15-560 (for others).

The pay scales were revised as a result of the recommen-

dations of the IVth Pay Commission with effect from 1.1.1986 as under:

Rs.425-700 = Rs.1400-40-1800-EB-50-2300

Rs.380-560 = Rs.1320-30-1560-EB-40-2040

The applicants who were thus in the category of Radio Technicians were assigned the scale of Rs.380-560 as non-diploma holders and were not given the scale or Rs.425-800 Direct Recruits, who were having the educational qualification of Diploma in Radio-Technology/Telecommunication Engineering were given the scale of Rs.425-700, i.e., the grade of Rs.425-700 was given to the Direct recruits.

It has been averred by the applicant that the duties for the post of Radio Technicians were laid down in the Standing Orders. The duties and responsibilities assigned are common and that there is no distinction in the nature of work and the posts are interchangeable and there is no separate seniority list distinguishing the diploma holders & others, and that only one seniority list is maintained consisting of both the grades of Rs.380-560 and 425-800. The next promotion to the post of Technical Assistant in the scale of Rs.425-800 (Rs.1400-2600) according to the recruitment rules is by promotion of Radio Technicians and thus in this regard there is no distinction between Diploma holders and others. Earlier these posts were filled by the Director of Preventive Operations, New Delhi under the Central Board of Excise and Customs upto 1.4.1986 and thereafter by the respective collectorates. The recruitment rules provided for written test, practical test/interview and the question papers for written test were common and the practical test/interview was also common for both diploma holders and non-diploma holders. The selection was based on merit. Same is the case of officers cadre viz., Communication Officer, Assistant Director (Communication), Deputy Director (Communication) etc. and the minimum qualification for recruitment is a Degree in Engineering or Master of Science with three years experience but no such qualification is required in the case of

ex-service officers of corresponding status in the communication field. They may come from any source, all of them are posted on two years probation. The contention of the applicant is that the principle of equal ~~pay~~ pay for equal work and that there is a discrimination. Such discrimination has been repeatedly reiterated by the Supreme Court in various judgments which has been denied to the applicants although they are entitled for same grade along with others from the date of joining the service of Radio Technician.

The respondents have stated that the grading in fact signified the quality of proficiency in the field of Radio/Line equipment, and in the latest notification the Government of India, Ministry of Personnel Public Grievances and Pension for equation of educational qualification no.1502/8/82-Eqpt(D) dated 12.2.1989 has not equated radio technicians to that of Diploma holders, and the authorities have come to the conclusion that the level of expertise is nowhere equivalent to the Diploma holders of Polytechnics. They further contended that the principle of equal pay and equal work has been misinterpreted by the applicants and they entered the service by way of re-employment and as per provisions of the recruitment rules. The IVth Pay Commission also has maintained to retain two pay scales for the Radio Technicians. The grades have been provided in the statutory rules and as such the Tribunal has no jurisdiction to deal in the matter, since the IVth Pay Commission has already studied the pay scales and had dealt at length on the basis of granting different scales of pay for different classes of employees and that the pay structure ~~cannot~~ cannot be determined by rule of thumb. The pay structure has to be correlated to the nature and quality of employment and the salary structure should adequately reflect ~~based~~ based on nature and responsibility of various posts.

They have denied the averment made by the applicant and have stated that the direct recruits should be atleast Naik Subedar or equivalent or Workshop Trade (Gr.I) preferably Foreman of Signals are considered equivalent to that of Diploma in Telecommunication engineering with two years experience for open category. They further contended that the nature of work done by these two categories is not same and cannot be compared. They further stated that the judgment relied on by the applicants are also not applicable in the facts and circumstances of the present case. It was the recruitment rules of 1978 which provided various relaxations with the broad objectives for re-employment of ex-servicemen, who would otherwise have been deprived of re-employment on the ground of lack of qualifications and thus is how they have been compensated and they cannot claim such rights in view of this application. They further state that there is a large difference between the work being performed by the two categories as the work performed by the diploma holders includes the work performed by the non-diploma holders is in addition to that of the other jobs which are not performed by the diploma holders and that the quality of work performed by the diploma holders is superior to that of non-diploma holders as per records and reports from the Zonal/Head Quarter workshop.

By the subsequent pleads the applicants have stated the following points in support of their plea:

- a) Radio Mechanics in the Armed Forces having 10 years service are equated to diploma holders, inasmuch as they have passed several examinations and proficiency tests in the Armed Forces.
- b) The selection was based purely on merit as decided by a common test, practical test and viva voce.
- c) the cadre of Radio Technicians is a fused one and

- no distinction exists within the cadre.
- d) The seniority of the Radio Technicians belonging to both the scales is a single one.
  - e) All Radio Technicians are entitled to promotion to the same cadre.
  - f) The duties are interchangeable and no distinction is made in assignment of work
  - g) No distinction is made in the standing orders assigning duties,
  - h) All Radio Technicians perform the same duties, functions and responsibilities.

In answer the respondents have filed sur-rejoinder opposing the claim of applicants.

It is true that equation of posts and equation of pay are matters primarily for the Executive Govt. and expert bodies like the Pay Commission and not for Courts but where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. (1982, SC 879 - Randhir Singh V. UOI & Ors.). The other cases referred to below on which the applicant relies also lay down the same principle:

- i) Bhagwan Dass V. State of Haryana (1988 SCC (L&S) 24)
- ii) P. Savita V. Union of India (AIR 1985 SC 1124) (case of Senior Draftsman in Ministry of Defence divided into two groups)
- iii) Jaipal V. State of Haryana (1988 SCC (L&S) 785)
- iv) P K Ramachandra Iyer V. Union of India (AIR 1984 SC 541)
- v) Dharendra Chamoli V. State of UP ((1986) 1 SC 37)
- vi) Surinder Singh V. | Engineer in Chief, CPWD ((1986) 1 SCC 639)
- vii) D S Nakara V. Union of India ((1983) 1 SCC 305)

Thus the applicant's advocate relied upon various judgments of the Hon. Supreme Court as well as the judgments of the Tribunal

in support of his case and on the doctrine of "equal pay for equal work".

In State of Mysore Vs. P Narasingh Rao (AIR 1968 SC 349) it was held that higher educational qualifications such as success in SSLC examination are relevant consideration for fixation of ~~gh~~ higher pay scale for tracers who had passed the SSLC examination and the classification of two grades of tracers in Mysore state, one for matriculate~~x~~ tracers with higher pay scale and the other for non-matriculate tracers with lower pay scale, was held valid.

Similarly in the case of UNION OF INDIA Vs. DR. (MRS) S B KOHLI (1973, 3SSC 592) the classification made on the basis of educational qualification for purposes of promotion was upheld on the ground that the classification made on the basis of such a requirement was not without ~~xxxx~~ reference to objectives sought to be achieved and there could be no question of discrimination.

In the case of STATE OF JAMMU & KASHMIR Vs. TRILOKI NATH KHOSA (1974, 1 SCC 19) the cadre of Assistant Engineers included of degree holders and diploma holders, they constituted one class of service but for promotion to the post of Executive Engineers only those Assistant Engineers were eligible for promotion who possessed Bachelor's Degree in Engineering and the diploma holders were eligible only if they had put in 7 years minimum service no such ~~xxxx~~ restriction was prescribed for degree holders, it was upheld the classification on the ground of difference in educational qualification as the educational qualification had a reasonable nexus to achieve administrative efficiency in Engineering Services.

Similarly in the case of MOHAMMAD SHUJAT ALI

Vs. UNION OF INDIA (1975, 3 SCC 76), the Constitution Bench held the classification of Supervisors into two classes, graduates and non-graduates for the purpose of promotion to the post of Assistant Engineers on the ground of educational qualification ~~along~~ although both the class of supervisors constituted the same service.

In the case of STATE OF U.P. Vs. J.P. CHAURASIA (1989, 1 SCC 121) it was held that the principle of "equal pay for equal work" has no mechanical application in every case of similar work. Article 14 and 16 permit reasonable classification founded on rational basis, it is, therefore, permissible to provide two different pay scales in the same cadre on the basis of selection based on merit with due regard to experience and seniority.

In the case of DR. C. GIRIJAMBAL Vs. GOVERNMENT OF ANDHRA PRADESH (1981, 2 SCC 155) the court held that the principle of equal pay for equal work could not be invoked or applied in the area of professional services like medical practitioners.

In the case of MEWA RAM KANOJIA Vs. ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ORS. (1989 SCC (L&S) 329) it was held that the doctrine of equal pay for equal work is not applicable where employees claiming parity have been validly classified as constituting a distinct and separate category and it was held that classification based on difference in educational qualifications may justify difference in pay scales and that the value judgment of Pay Commission, in absence of material to the contrary is to be accepted. It was further held that merely because similar duties and functions performed by others in other institutions are paid higher pay scale is no good ground to accept the claim for equal pay.

But in the same service and amongst the persons working on post having similar nomenclature



different pay scales can be prescribed on the ground of educational qualifications related or not with the source of recruitment.

From the above it is clear now that the doctrine of "equal pay for equal work" cannot be extended to every one doing similar work and the classification is based on educational qualifications, obviously different pay scales, it is justified. For the post of Radio Technician the educational qualification for direct recruitment are (1) Diploma in Radio Technology / Telecommunication Engineering (2) Ex-servicemen ~~xxx~~ from Defence services of Radio Mechanic trade with ten years service. Similarly for the higher post of Technical Assistant which is a promotion~~xxx~~ for the post of Radio Technician the educational qualification prescribed are (1) a diploma holder in telecommunication engineering with two years experience in the telecommunication field, (2) in the case of ex-service personnel, a Naib Subedar or equivalent of workshop trade (Gr.I) preferably Foreman of Signals or equivalent. This will thus include the persons from both the sources in case they have completed three years service and have qualified in the departmental gradation test. This is ~~so~~ so far as the promotional post is concerned and thus the difference is wiped out. ~~R~~ So far as the initial post is concerned it can be said that the diploma holders have got better qualifications and expertise, but the difference is wiped out and there is no discrimination in the next higher stage in the experience and expertise is concerned. Accordingly for the higher grade obviously there is no scope or ground for giving a different pay scale to those who come by way of promotion. According to the educational qualification there can be some difference in pay scales ~~and~~ and it is for the Pay Commission to consider in case there is some difference in pay scales, the difference may be reduced to the ~~minimum~~ ~~which~~ minimum which may

give impetus to those who come as ex-service men. Accordingly we are of the view in this case so far as the fixation is concerned no case for grant of equal pay has been made out. However, it is for the Government to consider and we hope they will consider in the light of the observations made in this judgment and will try to reduce the discrimination between the two grades to the minimum. With these observations the application is disposed of with no order as to costs.



( M Y PRIOLKAR )  
M(A)



( U C SRIVASTAVA )  
V.C.