

THE CENTRAL ADJUDICATIVE AUTHORITY : MUMBAI BENCH

MUMBAI

No. C.A. 901 of 1996.

956 of 1996.

Date of decision : 31st October 2001.

C.B.BHATIA & 52 ORS.

P.J.RAUT & 72 ORS.

Petitioners

Mr.D.V.Gangal

Advocate for the
Petitioner (s)

various

UNION OF INDIA & ORS.

Respondent (s)

Mr.R.R.Shetty

Advocate for the
Respondent (s)

COURT :

1. The Hon'ble Mr.S.L.Jain, Member (J).
2. The Hon'ble Mr.S.K.Agrawal, Member (A).

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment is to be circulated to the other Benches?

JUDGMENT DELIVERED BY HON'BLE Mr.S.K.Agrawal, Member (A).



CENTRAL ADMINISTRATIVE TRIBUNAL : MUMBAI BENCH
AT MUMBAI.

No.0.A.901 of 1996.
O.A.956 of 1996.

DATE OF ORDER : 31st October 2001

C O R A M :

1. Hon'ble Mr.S.L.Jain, Member (J).
2. Hon'ble Mr.S.K.Agrawal, Member (A).

BETWEEN :

C.B.BHATIA & 52 ORS.

P.J.RAUT & 72 ORS.

... Applicants

A N D

1. Union of India through
Chairman, Railway Board,
Rail Bhawan,
New Delhi.
2. The General Manager,
Central Railway,
C.S.T.Terminus,
Mumbai.

... Respondents

Counsel present for the applicants : Mr.D.V.Gangal.

Counsel present for the respondents: Mr.R.R.Shetty.

O R D E R

(Per Hon'ble Mr.S.K.Agrawal, Member (A))

O.A.901 of 1996 has been filed by 56 applicants whereas O.A.956 of 1996 has been filed by 76 applicants. Since a common point of issue is involved in both these O.A.s, the same are being disposed of by a common order.

2. The applicants had joined the service of the respondents as Tracer and have sought the following reliefs through these O.A.s :

(i) To hold and declare that Tracers in Railway are equal to the Draftsman, Grade III in CPWD.

(ii) To hold and declare that the Assistant Draftsman in Railway is equal to the Draftsman, Grade II in CPWD.

(iii) To hold and declare that the Draftsman, Grade-B in Railway is equal to the Draftsman, Grade-I in CPWD.

(iv) To hold and declare that the applicants are entitled to the fixation of payment on the basis of the post they were holding as on 13.5.1982 in accordance with the Ex A2 with further fixation on the basis of their promotion to the higher grade and according to the pay scale.

3. The case of the applicants is that the Govt. of India, Ministry of Finance (Department of Expenditure) issued an office memorandum dated 13th March, 1984, whereby it was directed that the scale of pay of Draftsmen, Grade-III, II and I in the other/departments of the Govt. of India other than CPWD, should be revised as per the revised scales of CPWD, provided that their recruitment qualifications are similar to those prescribed in the case of Draftsmen in CPWD. The relevant extract from the said Office Memorandum dated 13th March, 1984, is reproduced as under :

"The President is now pleased to decide that the scales of pay of Draftsmen, Grade-III, II and I in Offices/ Departments of the Govt. 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 Draftsmen in Central Railway Works Department. Those who do not 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 w.e.f. 1.11.1983."

4. The 1d.counsel for the applicants has accordingly submitted that all the applicants are entitled for fixation of pay on the basis of the post they were holding as on 13.5.1982. It is further stated that the "Tracers" who were equivalent to Draftsmen, Grade-III, were granted the pay scale of Rs.260-430/- by the Third Central Pay Commission which was subsequently changed to Rs.330-560/-. It has been stated by the applicants in the O.A.s that the Assistant Draftsmen in the Railway who were equivalent to Draftsmen, Grade-II were granted the pay scale of Rs.330-560/- by the Third Central Pay Commission which was subsequently changed to Rs.425-700/-. Similarly, Draftsmen-B in the Railways who were equivalent to Draftsmen, Grade-I were granted the pay scale of Rs.425-700/- by the Third Central Pay Commission which was subsequently changed to Rs.550-750/-. The applicants have accordingly prayed that they are entitled to the changed pay scale on the basis of the post they were holding as on 13.5.1982 and fixation of pay on each promotional post accordingly.

5. It was further stated by the 1d.counsel for the applicants that the President in exercise of the powers conferred by the Proviso to Article 309 of the Constitution, framed Recruitment Rules which came into force on 1st September, 1965. These rules prescribed the qualification of certificate of diploma from a recognised institution of less than 2 years duration for the post of Draftsmen, Grade-III, provided that the certificate or diploma course should include at least a 6 month period of practical experience.

6. A job evaluation study of the work of the Ferro-printers and Draftsman of the Central Public Works Department was undertaken in pursuance of the discussions in the Departmental Council (JCM) of the Ministry of Works & Housing. This was with the object of finding out the nature of the jobs of Draftsmen with a view of revision of scales of the staff. The following

observations and recommendations were made in the report submitted by the Work Study Unit in January, 1977 :

"From the detailed comparative picture given above, it will be seen that the three grades of Draftsmen in the CPWD who are doing the same duties and whose qualifications for the posts are also similar to the ones in the Ministry of Railways, Ministry of Engineering Services, etc., are not given the same. It is recommended that the scale of pay for the three grades of Draftsmen in the CPWD should be revised as follows -

Name of Post	Pay scale allowed at present.	Pay scale recommended.
Draftsman, Grade-III.	Rs.260-430/-	Rs.330-560/-
Draftsman, Grade-II.	Rs.330-560/-	Rs.425-700/-
Draftsmen	Rs.425-700/-	Rs.550-750/-

The Ministry of Railways (Department of Engineering), despite the aforesaid findings of the Work Study Unit to the effect that the duties performed by the Draftsmen of the Central Public Works Department were similar to those performed by the Draftsmen in other Ministries/Departments, the Ministry of Works, Housing & Supply still did not concede the demand of the Draftsmen and continued to maintain that the duties of Draftsmen, Grade-III were not comparable with those performed by similar categories of Draftsmen in other Ministries/Departments. Ultimately, the matter was referred to the Arbitration of Mr. Justice Jaswant Singh, Chairman, Shri G.Ramanujam, Member-Staff Side and Shri D.B.Makra, Member-Official Side in May, 1977. The Board of Arbitrators, after hearing of official side and staff side and having examined the merits of the case in the light of the entire material gave the Award to the effect that the scale of Draftsmen, Grade-III, should be Rs.330-560/- and consequently that of Draftsmen, Grade-II, as Rs.425-700/- and that of Draftsmen, Grade-I, Rs.550-750/-."

7. It has been stated by the applicants counsel that a representation dated 13.3.1984 was addressed by the applicants to the Ministry of Railways, but the Railway Ministry had not implemented the said memorandum dated 13.3.1984 issued by the Ministry of Finance (Department of Expenditure). The applicants' counsel further submitted that on the basis of the report of the Third Central Pay Commission in 1973, "Tracers" in the Railway and Draftsmen, Grade-III in C.P.W.D. were placed in the pay scale of Rs.260-430/-. Both these posts i.e. "Tracer" in

the Railways and erstwhile "Tracer" in CPWD before 1965, were in the same pay scale of Rs.110-200/-. Assistant Draftsmen in the Railway and Draftsmen, Grade-II in C.P.W.D. were also placed in the same pay scale of Rs.330-560/- and before Third Pay Commission, Assistant Draftsmen of Railways and Assistant Draftsmen in C.P.W.D. were in the same pay scale of Rs.150-240/-

8. It has accordingly been pleaded by the applicants' counsel that "Tracer" in Railways has all along been treated as equivalent to Tracers/Draftsmen, Grade-III in CPWD and Assistant Draftsmen in Railways have all along been treated equivalent to Assistant Draftsmen/Draftsmen in C.P.W.D. Similarly, Draftsmen-B in the Railways have all along been treated equivalent to Draftsmen, Grade-II in the C.P.W.D. It has, therefore, been urged that denial of similar pay scale to Draftsmen in Railway would result in their downgrading. It has further been argued by the applicants' counsel that educational qualifications for the post of "Tracer" in Railway and Draftsmen, Grade-III, in CPWD, is equivalent and as such, Draftsmen, Grade-III, in CPWD had itself compared them with the Draftsmen of the Railways with regard to their educational qualification while pleading their case in the Arbitration for getting their scales upgraded and as such, C.P.W.D. grades should be made applicable to them as per Ministry of Finance circular dated 13.3.1984 as also on the basis of the doctrine of equal pay for equal work.

9. The 1d.counsel for the respondents has stated that for Assistant Draftsmen in the Railways, only I.T.I. Certificate is required while for the post in the same scale in C.P.W.D., Diploma in Draftsmanship of 2 years duration is required. The higher scales have both a direct recruit component and a promotion component with 4 years minimum service to reach the scale of Rs.1600-2660/- in the Railways while in C.P.W.D., there is only one promotion component with a minimum period of 7 years requirement to reach that scale.

10. The respondents counsel has also contended that Railways are autonomous organisation with full control over their own service conditions and Govt. orders are not automatically applicable to the Railways. They have to be approved by the Railway Board and then made applicable to the Railway employees. The Railway Board did consider the notification issued by the Ministry of Finance, (Department of Expenditure), and for reasons which we consider are valid, decided not to implement them.

11. Besides, the Railway department is entirely separate and independent for all matters of administration including in the matter of payment of wages for their employees. The nature of work is also different when compared with the Draftsmen of CPWD. It may be probably after taking into consideration the nature of duties of workers that the Board of Arbitration had recommended the revision of pay scales of Draftsmen category of C.P.W.D. employees. When such a recommendation is made and consequently, the Govt. acted upon it and increased the pay and revised the scales in CPWD, the applicants cannot come to this Court for similar increase when similar recommendatory Bodies are there in the Railways. The applicants could have approached such Bodies to make them recommend revision of pay and get the same benefit. Without doing the same, the applicants have prematurely chosen the path of having approached this Tribunal for redressal of their grievance. The approach of the applicants is, therefore, in wrong direction and we, therefore, feel that the application is ill conceived.

12. Besides, the respondents have also stated that the Railways being a separate department, unlike the C.P.W.D., it is an industry by itself under the Govt. of India governed by the provisions of I.D. Act, Payment of Wages Act, Payment of Gratuity Act, Railway Establishment Manual and other separate Statutory Rules, governing the service matters so much so that the employees of Railways are in an entirely different position when compared with the Govt. Servants working under the CPWD. Hence, no parity can be assumed as claimed by the applicants. It has been held that unequal pay

for posts with the same nomenclature but different fields is permissible vide Kewal Ram Sharma and Ors. vs. State of Punjab & Ors. (1989 (3) SLR 507). In another case in 1989 (3) SC 296, their Lordships of the Hon'ble Supreme Court held that equal pay principle does not apply if the managements are different even though under the same owner in spite of the fact that the posts carry the same nomenclature.

13. Besides, the respondents have stated in their reply that the recruitment qualifications required for recruiting Draftsmen in the Central Railway are not the same as that of the C.P.W.D. Whereas in the C.P.W.D. there are three grade structure of Draftsmen, in the Central Railway there are four grade structure for Draftsmen. In view of the same, the respondents have submitted that the O.M. dated 19.10.1994 is not applicable to Draftsmen of the Central Railway. This is also because the prescribed qualification for recruitment is also not equivalent. The Draftsmen of C.P.W.D. in Grade-III are required to have diploma in Draftsmanship, whereas the equivalent of Assistant Draftsmen in the Railway has been prescribed as Matriculation with ITI Certificate. Accordingly qualification for recruitment of Draftsmen in C.P.W.D. and Railways are not similar and as such, the claim made by the applicants that they should be granted the grade on par with C.P.W.D. staff should not be accepted.

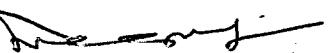
14. We find that on similar facts, Draftsmen working in Southern Railway had filed O.A.1179/1995 before C.A.T., Ernakulam Bench, seeking direction that their pay scale may be revised at par with the Draftsmen working in CPWD. However, CAT, Ernakulam Bench dismissed the said O.A. vide their judgment dated 22.7.1997. Similarly, a Division Bench of this Tribunal had held vide its judgment dated 5.7.1994 in O.A.466/1988 filed by the Railway Laboratory Staff Association vs. UOI & Ors. that pay scales are to be decided by the Govt. on recommendation of a specialised Body like the Pay Commission, Anomalies Committee, etc.

On similar basis, Draftsmen working in RDSO, Lucknow, had filed a writ petition in the High Court of Lucknow which stood transferred in CAT at Lucknow subsequently and was numbered as T.A. 1916/1987, wherein a direction was sought that the Ministry of Finance letter dated 13.3.1984 be implemented in favour of the Draftsmen working in the Railways. The said transferred application was dismissed by C.A.T. Lucknow, vide its judgment dated 3.6.97

15. Heard the ld.counsel for both sides.

16. After going through the facts of the case and the submissions made by the counsel for both sides, the position set out above emerges that the post of Draftsmen in the Railways cannot be equated to posts in other Departments like CPWD. The pay scales are under constant review by the Railways internally and by various Expert Bodies like the Pay Commission and the Anomalies Committee externally. The Apex Court has stressed time and again that the fixation of pay scales are to be left to such Expert Bodies and the scope of judicial intervention is limited to cases of patent discrimination between identically situated categories. We do not, however, see any such discrimination between identically situated persons and we consider that the case of the applicants does not merit judicial intervention on the ground of equal pay for equal work.

17. In view of the above, we do not find any merit in both the above O.A.s and the same are accordingly dismissed with no order as to costs.


(S.K.Agrawal)
Member (A)

Q.(87th) —
(S.L.Jain)
Member (J)