

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATIONS NOS. 202/01 & 203/01

DATED THE THURSDAY THE 16TH DAY OF AUGUST, 2001

CORAM; HON'BLE MR.JUSTICE ASHOK C. AGARWAL - CHAIRMAN
HON'BLE MR.G.C.SRIVASTAVA, MEMBER (A)

(1.) Praful Prabhakar Sule,
aged 54 years,
residing at 70/5, LIG, Shidhunagar,
Sector No.25, Nigdi,
Pradhikaran, Pune 411 044.

(2.) Sheikh Altaf Rajmahammaad,
aged 46 years,
R/A 33A, Saparas Line Bazar,
East Kirkki, Pune 411 003.
(By Advocate Shri N.K.Iyer)

Versus

Union of India,
through Secretary of the Government of India,
Ministry of Defence, Raksha Bhawan,
New Delhi 110 001.

The Engineer-in-Chief,
Army Headquarters,
Kashmir House, New Delhi 110 001.

The Commandant, Headquarters,
Office of the Commandant Bombay,
Engineering Group and Center,
Khadaki, Pune 411 030.
(By Advocate Shri R.K.Shetty)

COMMON ORAL ORDER

Per Mr.Justice Ashok C.Agarwal - Chairman

The applicants in O.A.202/01 and 203/01 are Civilian Instructor Foremen in Bombay Engineering Group, Kirkee. Since both these OAs involve common questions of fact and law, the same are being disposed of by this common order.

2. Applicant in O.A.202/01 had initially joined the aforesaid Bombay Engineering Group, Kirkee as Civilian Trade Instructor on

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29.12.1970. Applicant in O.A.203/01 had joined in the very same post on 13.9.1979, whereas the former was promoted to the post of Civilian Instructor Foreman on 19.2.1993 and the latter was so promoted on 13.5.1995. By the present OAs they claim the pay scale of Rs.1350-2200/- w.e.f. the date they were promoted as Civilian Instructor Foreman. They further claimed pay scale of Rs.4000-7000/- w.e.f. 1.1.1996 in terms of the recommendations of the Fifth Central Pay Commission.

3. Certain Civilian Instructor Foremen, being eight in number, had moved the Central Administrative Tribunal, Bangalore Bench by instituting O.A.788 to 795 of 1986 claiming the very same reliefs which have been granted in the present OAs. By a judgment and order passed on 15.10.1986, ^{claimed} ~~the claim has been granted~~. A copy of the judgment of the Bangalore Bench is annexed had Exhibit 'B' to the OA. This was followed by another OA 865/95 being filed before the Bombay Bench by applicants, 14 in number and by judgment and order of 21.7.1994 the aforesaid relief has been granted to them also. A copy of the judgment of the Bombay Bench is annexed at Exhibit 'C' to the OA. The present applicants who are now two in number have filed the present OAs claiming the very same relief which have been granted to the applicants in the aforesaid OAs by the Bangalore and Bombay Bench of the C.A.T.

4. We have considered the rival contentions raised by the learned counsel appearing for the contending parties. Shri Iyer the learned counsel appearing in support of the OAs has

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strenuously urged that applicants performed the very same functions and duties as the applicants in the aforesaid OAs. This aspect of the matter has not even been denied by the respondents. Based on the maxim of 'equal pay for equal work', the applicants in the instant OAs are entitled to the same pay scale as has been awarded in the aforesaid OAs.

5. Shri Shetty learned counsel appearing on behalf of the respondents with equal vehemence has opposed the claim of the applicants by contending that fixation of pay scales is not the domain of the Tribunals and the Courts. The same is best left to the expert bodies such as Pay Commissions and the Government. As far as the present applicants and others who are similarly placed are concerned, their claim had been referred to the Fifth Pay Commission and the Commission after considering the grant of the relief by the Bangalore and the Bombay Bench to the applicants ~~therein~~ ~~who were similarly placed~~ have declined to grant the said pay scale. The issue having been considered by the expert body, it will not be open to us to grant the claim contained in the present OA.

6. Both Shri Iyer as also Shri Shetty have relied upon the decisions rendered by the Hon'ble Supreme Court in support of their respective contentions. Shri Iyer has firstly relied on the decision of the Hon'ble Supreme Court in the case of Randhir Singh Vs. Union of India, AIR 1982 SC 879 wherein it has inter alia been ruled ~~out~~ as under:-

"The counter-affidavit does not explain how the case of the drivers in the police force is different from that of the drivers in other departments and what special factors weighed in fixing a lower scale of pay for them. Apparently in the view of the respondents, the circumstance that persons belong to different scales of

pay irrespective of the identity of their powers, duties and responsibilities. We cannot accept this view. If this view is to be stretched to its logical conclusion, the scales of pay of officers of the same rank in the Government of India may vary from department to department notwithstanding that their powers, duties and responsibilities are identical. We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things 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 of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same."

"8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 309 (d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a directive principle of State Policy. 'Equal Pay for equal work' for both men and women' mean equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for typing alleged robber-barrons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular Governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the takeover of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India into a Sovereign Socialist Democratic Republic. Again the word

equal

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'pay for equal work' is expressly recognised by all socialist system of law e.g. Section 59 of the Hungarian Labour Code, Para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic Para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western labour codes too. Under provisions in S.31 (g.No.2d) of Book I of the French Code due Travail and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic of clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance (vide International Labour Law by Istvan Szaszy p.2650 The preamble of the Constitution of the International Labour Organisation recognises the principles of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "Involving such injustice, hardship and privation to large number of people as to produce unrest so great that the peace and harmony of the world are imperilled" construing Articles 14 and 16 in the light of the preamble and Art.39 (d) we are of the view that the principle of "equal pay for equal work" is deducible from those Articles and may be properly applied to cases of equal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer."

7. Shri Iyer has next relied upon the case of P.Savita and others Vs. Union of India & others, AIR 1985 SC 1124 where it has been observed that

"14. With respect we agree with the conclusion arrived at in the above judgment, that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently."

8. Shri Shetty on the other hand has placed reliance on the case of Union of India & others Vs. Pradip Kumar Dey, 2000 (1)

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SLJ 20 (SC) wherein the Hon'ble Supreme Court has ruled as under:-

"14. In this background as to the position of law touching the controversy raised in this appeal, we have no hesitation in holding that the impugned judgment and order are unsustainable. The learned counsel for the appellants placed before us a chart showing differences in pay scales, facilities, other allowances, leave period, providing accommodation, etc. for the purpose of comparison between the pay scales and other facilities of the respondent and similar other employees working in Directorate of Coordination Police Wireless and other Central Government agencies. The learned counsel for the respondent reiterated that the nature of duties and responsibilities of the respondent are not only similar when compared to other employees similarly placed but on the other hand they are more hazardous. It is an indisputable fact that the pay scales now claimed by the respondent are those prescribed for the post of Assistant Sub-Inspector. As already noticed above, it is once again a promotional post for a Naik. Acceding to scales but may also lead to alteration of the pattern of hierarchy requiring re-orientation and restructuring of the other posts above and below the post of respondent. Added to this, such consequences are likely to be felt in the various other Central Police Establishments as well. All these which are likely to have a chain reaction, may require further consideration afresh by expert body like the Pay Commission or the Government itself at an appropriate time in an appropriate manner. Courts should normally leave such matters for the wisdom of administration except the proven cases of hostile discrimination. But in the case on hand having regard to the facts and circumstances of the case and the position of law stated above, the Division Bench of the High Court was not right in granting the relief itself, straightaway to the respondent; that too, without examining the implications and impact of giving such directions on the other cadres. However, we make it clear that the rejection of the claim of the respondent need not be taken as an issue closed once and for all. It is always open to the Government to consider the issue either by making reference to the Pay Commission or itself once again as to the grant of pay scales to the respondent. It is open to the respondent to make further and detailed representation."

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9. As far as the decisions earlier referred by the aforesaid two Benches are concerned, Shri Shetty has placed reliance on the case of Sadhan Chandra Dey and others Vs. Union of India & others, 1999 (2) AISLJ 267 and has contended that merely because ~~some Benches have given~~ ^a benefit by mis-interpreting orders, the same benefit cannot be given to others ~~also~~.

10. We have considered the aforesaid rival contentions raised by the learned counsel at some length and we find that this is a fit case to grant the relief which has been claimed by the applicants in the present OAs. As far as applicants herein are concerned they are identically placed like the applicants before the Bombay Bench. They are therefore performing same duties and functions as those performed by the applicants ~~before the Bombay Bench~~ ^{therein and that too} under the very same roof. By not granting reliefs claimed herein would lead to creation of two classes of workers - one set having been granted a higher pay scale and the other ^{being} left without granting ~~the same~~ to which we find no justification based on the principle of 'equal pay for equal work'.

11. In the circumstances we find that the applicants herein have made good their case for grant of the pay scale claimed herein. The present OAs are therefore allowed in terms of prayer clauses (a), (b) and (c) in each of these OAs. The respondents

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will comply with the present order within a period of three months from the date of receipt of a copy of this order.

12. No order as to costs.

(G.C.SRIVASTAVA)

Member (A)

(ASHOK) C.AGARWAL)

Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 11.2.

ABM 02

Date of Decision : .03.2002

RA/03/2002 with MP/55/2002
In OA/203/2001 & RA/04/2002 with
MP/56/2002 In OA/202/2001

Union of India & Others : Petitioner (s)

Mr. R. K. Shetty : Advocate for the applicant(s)

Versus

Shri Shaikh Altaf & Praful
Prabhakar Sule : Respondents

Advocate for the Respondents(s)

CORAM :

THE HON'BLE JUSTICE MR. ASHOK C. AGARWAL: CHAIRMAN

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER (A)

JUDGMENT

JUDGMENT

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

RA/03/2002 with MP/55/2002 in OA/203/2001

1. Union of India

Through: Secretary of the Govt. of India,
Ministry of Defence,
Raksha Bhavan,
New Delhi-110 001.

2. The Engineer-in-Chief,

Army Head Quarters,
Kashmir House,
New Delhi-110 001.

3. The Commandant,

Head Quarters,
Office of the Commandant,
Bombay Engineering Group &
Centre Khadaki, Pune-411 030.

: Applicants
(Ori.Respondents)

Advocate: Mr.R.K.Shetty

Versus

Shri Shaikh Altaf
Aged 46 years,
R/A 33A, Saparas Line Bazar,
East Kirki,
Pune 411 003.

: Respondent
(Ori.Applicant)

RA/04/2002 with MP/56/2002 in OA/202/2001

1. Union of India

Through: Secretary of the Govt. of India,
Ministry of Defence,
Raksha Bhavan,
New Delhi-110 001.

2. The Engineer-in-Chief,
Army Head Quarters,
Kashmir House,
New Delhi-110 001.

3. The Commandant,
Head Quarters,
Office of the Commandant,
Bombay Engineering Group &
Centre Khadaki, Pune-411 030.

: Applicants
(Ori.Respondents)

Versus

Praful Prabhakar Sule,
Residing at 70/5, LIG, Shidhunagar,
Sector No.25, Nigdi,
Pradhikaran,
Pune-411 044

: Respondent
(Ori.applicant)

Decision by Circulation

ORDER

RA/03/2002 With MP/55/2002

In OA/203/2001

&

RA/04/2002 With MP/56/2002

In OA/202/2001

Date: -3-2002

Hon'ble Mr.G.C.Srivastava

: Member (A)

These RAs have been moved by the original respondents in OA/203/2001 and OA/202/2001 disposed of by a common order passed on 16.8.2001. They have filed MPs/55/2002 and

56/2002 requesting for condonation of delay in filing the Review application on the ground that the judgment dated 16.8.2001 was received in the office of the respondents on 7.9.2001 and hence there was delay. In the delay condone application the original respondents have also requested that in the interest of justice the delay should be condoned and the clerical error apparent on the face of record in para-2 page-9 of the judgment be corrected. We have considered the grounds taken by the original respondents and in the interest of justice condone the delay.

2. This RA seeks a correction in the error in showing the pay scale of Rs.4000-7000 as against the pay scale of Rs.4500-7000 as prayed for by the original applicant in the OA. We have examined the prayer and find from the OA that the relief claimed in para-8(b) of the OA was regarding placement of the applicant in the scale of Rs.4500-7000 but due to typographical error the same had been shown as the pay scale of Rs.4000-7000 in para-2 of the judgment. We therefore, allow the correction of the typographical error and direct that the pay scale of Rs.4000-7000 as appearing in para-2 of the judgment be read as Rs.4500-7000.

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3. With the above direction, the RAs stand disposed of.
4. Copy of this order may be placed in the other O.As.
(OA/202/2001 & 203/2001)

(G.C.Srivastava)

Member (A)

(Ashok C.Agarwal)

Chairman