

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 184/92

Date of Decision :

19/6/98

S. R. Sutaria & 3 Others

Petitioners.

Shri G. S. Walia

Advocate for the
Petitioners.

VERSUS

Union Of India & Others

Respondents.

Shri V. S. Masurkar

Advocate for the
Respondents.

CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

(i) To be referred to the Reporter or not ? *✓✓*

(ii) Whether it needs to be circulated to other *✓✓*
Benches of the Tribunal ?

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*

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MUMBAI BENCH

ORIGINAL APPLICATION NO.: 184/92.

DATED : THE 19th DAY OF July, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

1. S. R. Sutaria.
2. G. V. Dalvi.
3. R. K. Chavan.
4. S. K. Pawaiya.

... Applicants.

All working as Junior Telecom
Engineers in Telecom Factory,
Deonar, Bombay - 400 088.

(By Advocate Shri G. S. Walia.)

VERSUS

1. Union Of India through
the Ministry of Communication,
Department of Telecommunication,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi - 110 001.
2. The General Manager,
Telecom Factory, Office
of the General Manager,
Department of Telecommunication,
Telecom Factory, Deonar,
Bombay - 400 088.
3. The Deputy Director General,
T. F. Section,
Department of Telecommunication,
20, Ashoka Road, Sanchar Bhavan,
New Delhi - 110 001.

... Respondents.

(By Advocate Shri V. S. Masurkar)

: ORDER :

(PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN)



This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

2. The applicants are four Junior Engineers in the Telecom Factory at Deonar, Bombay and they have filed this O.A. seeking higher scale of pay and change of designation. On the date of application, the applicants were designated as Junior Telecom Engineers but now the applicants want change of designation as Junior Telecom Officers.

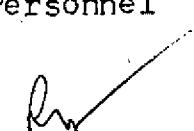
The applicants were originally in the pay scale of Rs. 425-700. The pay scale came to be revised after the Fourth Pay Commission Report and they were placed in the scale of pay of Rs. 1400-40-1800-EB-50-2300. It is applicants' grievance that though they are working under the Ministry of Telecommunication and belong to the department of Telecommunication, they are not given the same pay scale as other Junior Engineers in the Telecom department. As per the revised pay scale given by the Government for Junior Engineers in the department of Telecommunication, they were fixed in the pay scale of Rs. 1640-60-2600-EB-75-2900. Then there is a reference to Government letter dated 24.03.1987 wherein telecommunication department's certain junior engineers are given a lower pay scale of Rs. 1400-2300 and all others are given the higher pay scale of Rs. 1640 - 2900. It is applicants' case

that since their category is not mentioned in the said letter, they come under the residuary category and entitled to the higher pay scale. The applicants made representation to the department for fixing their pay scale at Rs. 1640-2900 but in vain. It is asserted that there is no difference between the Junior Engineers working in the Telecom Factory and other Junior Engineers working under the Ministry of Telecommunication. It is also stated that the concerned General Managers of the Telecom Factories made recommendations to the Government to give the higher pay scale to the Junior Engineers of Telecom Factory but the Government has not accepted the same. It is, therefore, stated that the applicants are entitled to the same pay scale as the Junior Engineers of the Telecom Department. That the action of the Government in not giving the pay scale of Rs. 1640-2900 to the applicants is arbitrary, illegal and unconstitutional. There is discrimination between the Junior Engineers of the Telecom Factory on the one side and the Junior Engineers of Department of Telecommunication. That the work done by the two sets of Junior Engineers are identical. That the applicants are entitled to equal pay for equal work. Hence, the application is filed praying for a direction to the respondents to grant pay scale of Rs. 1640-2900 to all the Junior Engineers working in the Telecom Factories w.e.f. 01.01.1986 and to redesignate the Junior Engineers as 'Junior Telecom Officers'.



3. The respondents have filed a reply and stated that number of circulars issued by the department of telecommunication do not automatically apply to the Junior Engineers or other officials working in the Telecom Factories unless it is specifically mentioned in the Circulars or Orders. It is stated that the Recruitment Rules of Junior Telecom Officers on the Telecom Main Stream and the Junior Telecom Officers in the Telecom Factories are different. That the Government has examined the question of granting ~~higher~~ pay scale to the Junior Engineers of Telecom Factories but did not agree to give the same scale as Junior Engineers of Telecom Department. The Fourth Pay Commission has specifically granted the pay scale of Rs. 1400-2300 to the Junior Engineers in the Telecommunication Factories. That the applicants have not made out any case of giving higher pay scale.

Subsequently, two more affidavits are filed by the respondents stating that the applicants are not entitled to higher pay scale. However, there is a mention in the latest affidavit dated 25.02.1998 that the Government has received number of representations from the Junior Telecom Officers of Telecom Factories and the same being examined in consultation with the Ministry of Finance and the Department of Personnel & Training.



4. As far as the grievance of the applicants about change of designation is concerned, it no longer survives, since the Government has acceded to the request of the applicants and other Junior Engineers of the Telecom Factories, and they have now been redesignated as Junior Telecom Officers. The rules have been amended as per Notification dated 02.06.1995. It clearly mentions that the word 'Junior Telecom Officers' shall be substituted wherever the word 'Junior Engineers' occurs in the Rules of 1971. Therefore, we are only concerned with the remaining grievance of the applicants, namely - whether they are entitled to higher pay scale or not ?

5. Shri G. S. Walia, the Learned Counsel for the applicants contended that the Junior Telecom Officers or Junior Engineers of Telecom Factories and the Junior Telecom Officers ^{or} of Junior Engineers of the Telecommunication Department are one and the same in all respects and the Government has discriminated against the JEs/JTOs of the Telecom Factory in not giving the same pay scale as given to JEs/JTOs of Department of Telecommunication. Though there is some vague plea in the application about equal pay for equal work, the stress or emphasis at the time of argument is only on the ground of discrimination between JEs/JTOs of Telecom Factories and JEs/JTOs of Department of Telecommunication. On the other hand, the Learned Counsel appearing for the respondents, Shri V.S. Masurkar, contended that the Court or Tribunal cannot go into the question of granting a particular pay scale to a particular group

be
of Officers, which has to ~~normally~~ done by an
Expert Body like Pay Commission or some other
expert body appointed by the Government.

Then, on merits, it was argued that the two sets of
Junior Telecom Officers are not identical in all
respects and, therefore, the question of equal pay
for equal work or the question of discrimination
does not arise at all. He therefore argued that the
applicants have no case and it is a policy matter
for the Government to decide as to which pay scale
is to be given to which category and it is not a
matter which can be decided by a Court or Tribunal.

The Learned Counsel for the applicants
relied on the recommendations of the General Managers
of the Telecom Factories to the Government for giving
the same pay scale. However, the Government examined
it and rejected the proposal. Mere recommendations
of the General Managers of the Telecom Factories is
of no consequence. Since it is policy matter, the
Government has to decide and in this case, the
Government has rejected the proposal.

6. In the light of the arguments addressed
before us, the short point for consideration is,
whether the applicants are entitled to the pay scale
of Rs. 1640 - 2900 as claimed ?

7. The applicants have produced many of the
circulars, which no doubt, refers to Junior Engineers
in the department of Telecommunications. The

applicants are working as Junior Engineers in the Telecom Factories. The respondents have taken a specific stand that all orders and circulars pertaining to Junior Engineers of Department of Telecommunication do not automatically apply to the Junior Engineers of Telecom Factory unless specifically mentioned or the letters are marked to Telecom Factory for implementing them. Therefore, by merely producing some circulars or orders pertaining to the Junior Engineers of Department of Telecommunication, the applicants do not get the relief unless they show that the circulars apply to them. The applicants have not placed on record any general circular or general order to show that all communications, orders or circulars which apply to the Junior Engineers of Department of Telecommunication automatically applies to the Junior Engineers of Telecom Factory. In one sense, even the Telecom Factories come under Department of Telecommunication. But in the very nature of things, for all practical purposes the Telecom Factory employees cannot be compared on par with the Officers of Department of Telecommunication. Apart from common service conditions, under the general service rules, the officials working for the Telecom Factory are also governed by the Factories Act, Industrial Disputes Act, etc.

8. As already stated, two grounds are made out in the O.A. for claiming equal pay with the Junior Engineers of Department of Telecommunication. One ground is that, both the Junior Engineers do

the same type of work and therefore, on the principle of equal pay for equal work, the Junior Engineers of Telecom Factory should get same pay scale as Junior Engineers of Department of Telecommunication. The other ground is that the Government has discriminated between the two sets of Junior Engineers by giving lesser pay scale to the Junior Engineers of Telecom Factories than the Junior Engineers of Department of Telecommunication.

To substantiate these two grounds, the applicants should have made necessary pleadings supported by necessary materials. Except a bald or vague allegation that there is no distinction between the two sets of Junior Engineers or an assertion that the two sets of Junior Engineers are identical, no factual data is mentioned in the pleadings and further, no materials are produced to support such a ground. There should have been a pleading to show what is the qualification for Junior Engineers on Telecom Factory side and junior engineers on Department of Telecommunication side. Then, whether training is given for both sets of Junior Engineers and if so, the duration of the training, nature of training, etc. should be pleaded. Then there must be necessary pleadings to show the duties and responsibilities of both sets of Junior Engineers. Then there must be material in the form of Government rules, orders, circulars, etc. to support such allegations in the pleadings. In the present case, except bald allegation that both the Junior Engineers are identical,

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there is no sufficient pleadings much less sufficient material to make out such a case. It is very easy to say that all Junior Engineers are one and the same, but when we have to decide a question of equal pay for equal work or the question of discrimination, the applicants should make sufficient pleadings and support the allegations by way of necessary documents.

9. The Learned Counsel for the respondents made one strong argument to show that the two sets of Junior Engineers cannot be treated equally. He pointed out that the Junior Engineers on the Telecom Factories side are working in big cities since the factories are situated at Bombay, Jabalpur and Calcutta. He further pointed out that the Junior Engineers working in the factories work within the four walls of the factory. On the other hand, it was argued, that the Junior Engineers on the Telecom Main Stream are doing field job and executive job and they are transferable all over India. He pointed out that they are called for work even beyond office hours and they have to visit different spots. Then, he also highlighted that junior engineers are posted in places like Tripura, Jammu & Kashmir, ^{Assam} Assam, and other places, where normally the officers are hesitant to go. That means, the junior engineers on the Telecom side have to work anywhere in India and they have to do field job and they are even posted in such places like Tripura, Jammu & Kashmir, Assam, etc. where normally the Government officials are reluctant to go. Therefore, the duties and

and responsibilities of the Junior Engineers on the main stream are quite different and distinct from the Junior Engineers on the factory side who work within fixed hours, within four corners and that ^{to} in three big cities, namely - Bombay, Jabalpur and Calcutta. ^{We are} highlighting only one of the points to show that in the absence of proper pleadings and proper material, it is not possible to say that the two sets of Junior Engineers have similar qualifications, similar duties and similar responsibilities.

10. No doubt the Learned Counsel for the applicant submitted that the qualification for the Junior Engineers is degree in engineering as per the recent amendment rule of 1995. It may be so. But, we are considering the discrimination in pay scale right from 01.01.1986. If the applicants want the same pay scale from 01.01.1986, then they must plead as to what was the qualification for Junior Engineers in the Factory side in 1985-86 and what was the qualification for the Junior Engineers on the Department of Telecommunication side in the same year. The recent amendment done during the pendency of the O.A., as late as 1995, cannot be taken into consideration for giving benefit from 1986.

11. The Learned Counsel for the applicant invited our attention to a judgement of the Apex Court in the case of Doordarshan Cameramen's Welfare Association (Regd.) v/s. Union Of India & Another

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reported in 1991 SCC (L&S) 422. In that case, the Supreme Court observed that the Staff Artistes of Doordarshan like Cameramen Grade-II, Sound Recordists and others working in Doordarshan are entitled to parity in pay scales with their counter-parts in Films Division. But the Supreme Court in its judgement did not go into the question of facts, namely - whether the Staff Artistes of Doordarshan have same duties, responsibilities and qualifications like their counter-parts in Films Division. What the Supreme Court observed is that, the matter is already covered by its earlier decision dated 26.08.1986 in Writ Petition No. 974 of 1978 and connected cases. The earlier Writ Petitions were filed by only few officers and those Writ Petitions were allowed. Then, some of the other officers filed the present Writ Petition and the Supreme Court observed that since the benefits are already granted to other similar officials, the same benefit was extended to the Petitioners who filed the present writ petition. Though the Government raised number of objections about treating the two sets of Staff Artistes as identical, the Supreme Court rejected that argument on the sole ground that the question is no longer res integra and stands concluded by the previous judgement which is binding on the Government and the benefit of the said judgement should be extended to all those who belong to the three categories (vide para 4 of the judgement). The Learned Counsel for the applicant has not produced the earlier

judgement of the Supreme Court where the Supreme Court had considered on facts how the two sets of Artistes are identical for getting common pay scale.

12. On the other hand, the Learned Counsel for the respondents invited our attention to three decisions, which may be considered now.

In 1988 SCC (L&S) 673 [Federation of All India Customs and Central Excise Stenographers (Recognised) and Others v/s. Union Of India and Others], the question was, whether the Stenographers working in the Customs Department should get the same pay scale as Stenographers working in the Central Secretariat and Stenographers attached to the Ministers. On facts it was argued that the Stenographers did the same type of work, whether they are working in the Customs Department or Central Secretariat and further, their recruitment and qualifications were same. Still the Supreme Court declined to grant equal pay between the two sets of Stenographers only on the ground that the responsibilities of the Stenographers working under the Ministers and Secretaries to Government is more than the responsibilities of a stenographer in a Department. It is, therefore, seen that though the qualifications, recruitment and nature of duties were similar, still the Supreme Court observed that on the question of responsibility of stenographers attached to Ministers and Secretaries, they were rightly given a higher pay scale which cannot be granted to Departmental

Stenographers on the ground of equal pay for equal work.

In a case reported in 1993 (2) SLJ 91

¶ State of Madhya Pradesh & Another V/s. Pramod Bhartiya & Others ¶ an identical question arose about equal pay for equal work and discrimination under Article 14 of the Constitution of India. In that case, Non-Technical Lecturers of Higher Secondary Schools claimed parity of pay scale with Non-Technical Lecturers of Colleges on the plea that they were doing same work and had same qualifications. In that case, on facts it was found that qualifications to the two types of Lecturers was same, service conditions were same and status of the School was also same. However, the Supreme Court pointed out that there was conspicuous absence of any clear pleadings and material suggesting that the functions and responsibilities of both the categories of Lecturers were similar. There was neither allegation nor proof about doing similar functions qualitatively.

The Supreme Court observed as follows :

"..... What is more important and crucial is whether they discharge similar duties, functions and responsibilities. On this score there is a noticeable absence of material. We do not find any clear material to show that the duties, functions and responsibilities of both the Categories of Lecturers are identical or similar."

In para 13 of the reported judgement the Supreme Court observed that the quality of the work may vary from post to post and from institution to institution. The

Supreme Court held that the original petitioners have failed to establish their duties and responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. It is further observed as follows :

"It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden the Original Petitioners (Respondents herein) have failed to discharge."

With the above observations, the Supreme Court set aside the judgement of the Administrative Tribunal and allowed the appeal.

In our view, the above judgement squarely applies to the facts of the present case. Here also, except bald allegations, there is no sufficient pleadings to show the nature of recruitment, qualifications, nature of duties and responsibility of both sets of Junior Engineers. Therefore, it cannot be said that there is no discrimination to attract Article 14 of the Constitution or to attract the principles of equal pay for equal work.

13. Then we refer to a Full Bench judgement of this Tribunal reported in 1995 (2) ATJ 61 D.G.O.F. Stenographers Association V/s, Union Of India & Others In that case the Stenographers of Ordnance Factory Board



wanted parity in pay scales with that of Stenographers posted in Central Secretariat & Other officials of the Central Government and also Armed Forces Headquarters. The main thrust in that case was on the ground of equal pay for equal work. The Full Bench pointed out that there are number of grounds to show as to how different pay scales are given to two different sets of officials depending upon the source of recruitment, nature of duties, functions, responsibilities, etc. The Full Bench therefore rejected the claim of the applicants for getting equal pay with other Stenographers. It is pointed out that mere equality in respect of work cannot alone be the criterion to determine the pay scale.

14. As already pointed out, there is neither sufficient pleadings, much less sufficient material on record to substantiate the applicants' case of equal pay for equal work or the ground of discrimination under Article 14 of the Constitution of India. It is well settled that the question of giving a particular scale of pay for a particular class of officials is a policy matter. The Government, as a policy, ^{gave} gave different scales of pay for Junior Engineers of Telecom Factory and Junior Engineers in the Main Stream of Department of Telecommunication. Since the applicants have failed to make out a case of discrimination, the applicants cannot get equal pay with the Junior Engineers of Main Stream of Department of Telecommunication.

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15. During the pendency of this case, the the Fifth Pay Commission Report has been received and the Government has implemented the same by issuing necessary orders. In the latest affidavit dated 01.06.1998 filed by Mr. Abdul Majid, Director (Telecom Factories), Department of Telecom, Ministry of Communications, it is stated that on the basis of the Fifth Pay Commission, the Junior Telecom Officers of Telecom Factories have been now given the pre-revised scale of pay Rs. 1600-2660, for which the new revised pay scale will be Rs. 5000-150-8000. We can take judicial notice that the Fifth Pay Commission specifically considered the cases of Junior Telecom Officers of Telecom Factories who were in the pay scale of Rs. 1400-2300. The Pay Commission in para 50.92 (Volume-I) has fixed the Junior Engineers/Junior Telecom Officers of Factories at Rs. 1600-2660 which corresponds to the revised pay scale of Rs. 4500-125-7000. Even the Fifth Pay Commission has not given the applicants the pre-revised pay scale of Rs. 1640-2300 for which the corresponding revised pay scale is Rs. 5500-175-9000. When a expert body like Pay Commission itself has not extended the same scale of pay to the JEs/JTOs of Telecom Factories, this Tribunal cannot go into the question of fixing pay scale. It is also seen from the latest affidavit mentioned above that the Government has now confirmed the revised pay scale of JTOs of Telecom Factories as Rs. 5000-150-8000 corresponding to the pre-revised scale of Rs. 1600-2660 given by the Fifth Pay Commission.



16. Alongwith the latest affidavit, a letter of Joint Secretary to the Ministry of Finance dated 02.03.1998 is enclosed. In particular, para 3 is relevant for our present purpose, which reads as follows :

"The Commission's recommendations also envisage the provision of a second pay scale of Rs. 5500-9000 (corresponding to the pre-revised pay scale of Rs. 1640-2900), for the post of Junior Telecom Officers of Telecom Factories. Its introduction prospectively will be possible only after the existing cadre of Junior Telecom Officers is suitably restructured to facilitate the placement of a specified number of posts in the higher pay scale. It is, therefore, requested that a specific proposal in this regard, indicating the justification therefor, financial indications and other relevant factors, may kindly be made available for further consideration.

We, therefore, see that the Government is considering the question of granting a second pay scale which corresponds to the pre-revised pay scale of Rs. 1640-2900, which the applicants are claiming in the present O.A. But it is stated in the letter that the Government will consider the same after the existing cadre of Junior Telecom Officers is suitably restructured to facilitate the placement of a specified number of posts in the higher pay scale. In this letter, the Joint Secretary to the Ministry of Finance has requested the Department of Telecommunication

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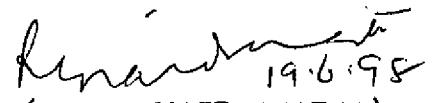
to furnish the necessary materials to take a decision regarding restructuring of the cadre to provide some posts in the higher pay scale. We only wish and hope that the Government will expedite in taking a decision in restructuring the cadre of JEs/JTOs of Telecom Factories to facilitate certain posts in the higher cadre of Rs. 5500-9000. Even the applicants or their association can also make further representation to the Government in the light of para 3 of the Joint Secretary's letter dated 02.03.1998 and place additional factors or materials in support of their claim to facilitate the Government to take a decision in the matter. Then the Government may consider and take appropriate policy decision on this matter.

17. In our view, the applicants have failed to make out a case of getting higher pay scale from 01.01.1986. Even the latest Fifth Pay Commission Report has not given the same pre-revised scale of Rs. 1640-2900 to the applicants but gave them only pre-revised pay scale of Rs. 1600-2660. When an expert body like Pay Commission itself has not considered the demand of the applicants, we do not find any ground to grant the higher pay scales which the applicants have claimed in the present O.A. right from 01.01.1986, particularly, in the absence of specific pleadings and documents in support of the same. Therefore, the applicants are not entitled to any higher scale of pay w.e.f. 01.01.1986 but however, they are already getting now the revised higher scale as per

the Fifth Pay Commission Report and they are entitled to certain posts in a still higher scale, which is under examination before the Government, which we have pointed out earlier.

18. In the result, the O.A. fails and is dismissed subject to the observations made in para 16 of the order. No order as to costs.


(D. S. BAWEJA)
MEMBER (A).


19.6.98
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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