(67)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NOS.: 475/93, 477/93, 478/93, 479/93, 480/93, 481/93, 482/93, 489/93, 490/93, 491/93, 492/93, 493/93, 494/93, 495/93, 496/93, 497/93, 498/93, 499/93, 500/93, 501/93, 502/93, 503/93, 504/93, 505/93, 506/93, 508/93, 509/93, 510/93, 512/93, 513/93, 514/93, 515/93, 516/93, 517/93, 518/93.

Shri S. S. Shirsekar	...	Applicant in O.A. No. 475/93.
Shri A. D. Phankare	...	Applicant in O.A. No. 477/93.
Shri G. S. Kali	...	Applicant in O.A. No. 478/93.
Shri P. M. Kamble	...	Applicant in O.A. No. 479/93.
Shri D. V. Karmarkar	...	Applicant in O.A. No. 480/93.
Shri S. V. Tambe	...	Applicant in O.A. No. 481/93.
Shri S. K. Jadhav	...	Applicant in O.A. No. 482/93.
Shri N. J. Warlikar	...	Applicant in O.A. No. 489/93.
Shri G. D. Rakshikar	...	Applicant in O.A. No. 490/93.
Shri A. D. Patel	...	Applicant in O.A. No. 491/93.
Shri K. P. Barve	...	Applicant in O.A. No. 492/93.
Shri V. G. Tambe	...	Applicant in O.A. No. 493/93.
Shri S. S. Bansode	...	Applicant in O.A. No. 494/93.
Shri S. B. Koiri	...	Applicant in O.A. No. 495/93.
Shri M. B. Mane	...	Applicant in O.A. No. 496/93.
Shri D.A. Kargutkar	...	Applicant in O.A. No. 497/93.
Shri J. M. Vaidya	...	Applicant in O.A. No. 498/93.
Shri N. R. Sakhare	...	Applicant in O.A. No. 499/93.
Shri S. L. Taresu	...	Applicant in O.A. No. 500/93.

Shri K. M. Shirsekar	...	Applicant in O.A. No. 501/93.
Shri V. B. Patil	...	Applicant in O.A. No. 502/93.
Shri S. I. Dawat	...	Applicant in O.A. No. 503/93.
Shri K. R. Sharma	...	Applicant in O.A. No. 504/93.
Shri R. D. Andrades	...	Applicant in O.A. No. 505/93.
Shri D. S. Nagwekar	...	Applicant in O.A. No. 506/93.
Shri T. G. Rahate	...	Applicant in O.A. No. 508/93.
Shri P. S. Pawar	...	Applicant in O.A. No. 509/93.
Shri B. V. Palvi	...	Applicant in O.A. No. 510/93.
Shri G. S. Shinde	...	Applicant in O.A. No. 512/93.
Shri B. B. Mokal	...	Applicant in O.A. No. 513/93.
Shri M. L. Sangelkar	...	Applicant in O.A. No. 514/93.
Shri S. R. Kamble	...	Applicant in O.A. No. 515/93.
Shri K. S. More	...	Applicant in O.A. No. 516/93.
Shri V. V. Chavan	...	Applicant in O.A. No. 517/93.
Shri D. B. Jadhav	...	Applicant in O.A. No. 518/93.

VERSUS

Director General, A.I.R. (CCW),
All India Radio,
Akashvani Bhavan,
Parliament Street,
New Delhi- 110 001 & Others ... Respondents

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri P. P. Srivastava, Member (A).

APPEARA-NCE :

1. Shri M.S. Ramamurthy alongwith Shri R. Ramamurthy, Counsel for the applicants.

2. Shri M. I. Sethna alongwith Shri Suresh Kumar, Counsel for the respondents.

JUDGEMENT : DATED : 1.12.95

PER.: SHRI B. S. HEGDE, MEMBER (J)

1. There are altogether 35 applicants who have filed the application under Section 19 of the Administrative Tribunals Act, 1985, seeking that they should be paid the same salary as is paid to the employees in the All India Radio and Doordarshan India in the same department i.e. equal pay for equal work. Since the issue involved in all these O.As. are one and the same, we propose to dispose of all these O.As. by passing a common order.

2. The applicants in these O.As. belong to different categories i.e. Khallasi, Beldar - they are treated as unskilled category. Assistant Plumber, Assistant Operator (E & M) and Assistant Wireman are treated as Semi-skilled category and lastly, Serviceman (AC&R) and Carpenter are treated as skilled category. It is an admitted fact that the civil/electrical construction work was carried out by Central Public Works Department, therefore, the civil construction work of A.I.R. and D.D.I. was also carried out by the Central P.W.D. Due to administrative reasons, in the year 1971-73, a new wing came into existence which was called"All India Radio, Civil Construction Wing" for the constructions of A.I.R. and D.D.I. Buildings and maintenances of the existing buildings of A.I.R. and D.D.I. and other media units. Out of 35 O.As.,

Insofar as Khallasis are concerned, they are seeking parity with that of Khallasis in All India Radio and Doordarshan India. The Khallasis (unskilled) in All India Radio (Civil Construction Wing) are paid in the scale of Rs. 750-940 whereas the Khallassis (unskilled) in All India Radio and Doordarshan India are paid in the scale of Rs. 775-1025/-. The following O.A.s are filed by the Khallasis :-

O.A. NOS.: 479/93, 483/93, 489/93, 492/93, 499/93, 500/93, 503/93, 514/93.

Similarly, the Beldar (unskilled) in All India Radio (C.C.W) claim parity with that of Khallasi (unskilled) in All India Radio and Doordarshan India. The Beldar (unskilled) in A.I.R.(C.C.W) are paid in the scale of Rs. 750-940 whereas in All India Radio and Doordarshan India, they are paid in the scale of Rs. 775-1025. The O.As. filed by them are as follows :-

O.A. Nos.: 501/93, 510/93 and 512/93.

Insofar as Assistant Plumber (semi-skilled), they are paid in the scale ot Rs. 800-150 and the O.A. filed by them is O.A. No. 515/93. The Assistant Operator (E&M) Semi-skilled are paid in the same scale as that of Assistant Plumber and the O.As. filed by them are - O.A. Nos.: 491/93, 490/93, 481/93, 498/93 and 505/93 and similar is the pay

scale of Assistant Wireman who have filed the following O.As.:-

O.A. NOS.: 493/93, 508/93, 480/93, 518/93, 509/93, 475/93, 477/93, 495/93, 506/93, 478/93, 496/93.

All the three categories are seeking parity with that of 'technicians' in All India Radio and Doordarshan India whose payscale is Rs. 1200-1800.

3. The last category i.e. Servicemen and Carpenter - they are treated as Skilled category. The pay scale of Carpenter in A.I.R. (C.C.W) is Rs. 950-1500 and following O.A's are filed by them - No. 497/93. The Servicemen is paid in the scale of Rs. 800-1150 in A.I.R. (C.C.W) and the O.A. filed by them are - 502/93, 504/93, 516/93 and 517/93. They are seeking parity with the 'technicians' in All India Radio and Doordarshan India, whose payscale is Rs. 1200-1800.

4. We have heard both the counsel in a detailed manner and perused the documents.

5. The Learned Counsel for the applicant, Shri Ramamurthy, vehemently urged that the entire All India Radio (Civil Construction Wing) is not a work-charged establishment though they are treated as work-charged employees and thus, they should be paid the semi-skilled category payment and not the unskilled category. Though the recruitment prescribed

for the two categories i.e. Khallasis in A.I.R. (C.C.W) and A.I.R. and D.D.I. may be different but the work performed by both the categories are one and the same and therefore, they should not be discriminated in paying the salary. The increase they are seeking in these O.As. are paltry sum and does not involve heavy expenditure on the part of the respondents, since both the Khallasi and Beldar are being paid in the scale of Rs. 750-940 at the moment and they are seeking parity with that of Rs. 775-1025/- paid in A.I.R. and Doordarshan India. Similarly, the 'Assistant Wireman, Assistant Operator and Assistant Plumber' are seeking parity with that of Technicians in All India Radio. The present scale is given to 'Helpers' in A.I.R. and Doordarshan India, which is a Group 'D' post. Since they are semi-skilled, they are entitled to and required to be paid the pay scale of the employees who are categorised as semi-skilled and not of unskilled employees. Hence, there is a discrimination in making payment. Just because they work on the lines of C.P.W.D. manual, they cannot be treated as work-charged employees. In this connection, he draws our attention to the definition of "work-charged" employees in C.P.W.D. manual which reads as follows :-

> "Work-Charged establishment means that establishment whose pay, allowances, etc. are directly chargeable to "Works". Work-charged staff is employed on the actual execution of a specific work, sub-works of a specific work, etc. The cost of entertainment

of work-charged establishment should invariably be shown as a separate sub-head of the estimate for a work. In other respects the workcharged staff is quite comparable to the regular categories."

Since they have been working for a number of years, it is not open to the respondents to treat them as a work-charged employee, as the work performed by them as well as Khallasi in A.I.R./D.D.I. are one and the same. The main emphasy is that their salary should be fixed with that of skilled and unskilled category in the A.I.R. and D.D.I. irrespective of the mode of recruitment and the educational qualification would not come in the way of making the payment. In support of his contention, the learned counsel for the applicants relies upon the following decisions of the Courts :

(i) AIR 1982 S.C. 879 - Randhir Singh V/s. Union Of India - wherein the Supreme Court has held 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 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.

In that case, 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 facts weighed in fixing a lower scale of pay for them, etc.

(ii) AIR 1986 S.C. 584 - Surinder Singh V/s. Engineer-in-Chief, C.P.W.D. & Others -

Wherein the Court has held that persons employed on a daily wage basis in the Central Public Works Department are entitled not only to daily wages but are entitled to the same wages as other permanent employees in the department employed to do the identical work. In this connection, it cannot be said that the doctrine of "equal pay for equal work" is a mere abstract doctrine and that it is not capable of being enforced in a court of law. However, it is observed that the Central Government, the State Government and likewise, all Public Sector Undertakings are expected to function like model and enlightened employers and arguments that the principle ot equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law and they are not expected to take a negative stand insofar as the payment to regular employees and the daily wages employees.

(iii) AIR 1985 S.C. 1124 - P. Savita V/s. Union Of India :- wherein the Court has held, where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently.

In that case, it is the classification of the Senior Draughtsmen into two groups, that is responsible for the higher pay. For this classification, the Government must be able

to satisfy the Court of certain other tests which are non-existent, in this case, since it is not in dispute that Senior Draughtsmen, belonging to the two divisions, do equal and same work. Thereby, the Court has observed that they cannot discriminate between the two.

(iv) AIR 1987 S.C. 2049 - Bhagwan Dass V/s. State of Haryana :

Wherein the Supreme Court has held, once the nature and functions and the work of two persons are not shown to be dissimilar, the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "equal pay for equal work". When the duties and functions discharged and work done by the Supervisors appointed on regular basis and those appointed on temporary basis in the education department are similar, the fact that the scheme under which temporary appointments are made is a temporary scheme and the posts are sanctioned on a year to year basis having regard to the temporary nature of the scheme cannot be a factor which could be invoked for violating "equal pay for equal work" doctrine. Whether the appointments are for temporary periods and the schemes are temporary in nature is irrelevant once it is shown that the nature of duties and functions discharged and the work done is similar and the doctrine of "equal pay for equal work" is attracted.

The question to be seen here is whether the ratio laid down by the aforesaid respective Supreme Court cases would apply to the facts of this case. In our opinion, that the decisions are based on the facts of each case and the category of employees working were found to be performing similar type of work vis-a-viz with the regular employees of the respondents. In the instant case, the applicants have not shown that the work performed by them are similar to the work in the corresponding category in A.I.R. and D.D.I. and also the responsibilities and educational qualifications prescribed for the said post are similar to that of the applicants and thus distinguishable. As stated earlier, their main contention is that, they are treated as work-charged employees and they should be equated with the regular employees recruited in the All India Radio and Doordarshan India. In support of his contention, the Learned Counsel for the applicant has also cited other cases- AIR 1990 S.C. 2178 F.C.I. Workers' Union V/s. F.C.I. and AIR 1992 L & C SC 2418-State of M.P. V/s. Pramod Bharatia & Others.

4. As against this, the Learned Counsel for the respondents, Shri M.I. Sethna alongwith Shri Suresh Kumar, urged that the applicants have not established and adduced any evidence to show that they are doing the same duties and perform the same responsibilities as that of employees in All India Radio/Doordarshan India. They have further

contended that the applicants neither adduced any documentary proof nor they have established orally during the course of hearing, that the duties and responsibilities performed by them are similar to the duties and responsibilities performed by the corresponding employees in the All India Radio/ Doordarshan India. Both in education qualifications and the duties of the applicants working in A.I.R. (C.C.W) and others in A.I.R. and Doordarshan India are different. Even the nature of duties are different. Further, even if the educational qualification and duties are similar, in that event also they are not entitled for "equal pay for equal work". When they claim parity with that of other employees, the burden is on them to prove. Admittedly, in the present case, they did not establish the same, for example, insofar as Khallasis in A.I.R(C.C.W) is concerned, it is 100% direct recruitment and no educational qualification is prescribed except physical fitness for unskilled work, whereas Khallasi in A.I.R. is a Group 'D' post, 100% direct recruitment with minimum educational qualification prescribed is 8th Standard and possessing good physique. Similarly, the 'Helper' in A.I.R. which is also a Group 'D' post, the method of recruitment is 50% by promotion and 50% by direct recruitment. The educational qualification prescribed is - working knowledge of electrical and mechanical machines. 50% recruitment by promotion is from the cadre of Khallasis

who have three years regular service in the cadre. Therefore, it is clear, that there cannot be any comparison between the Khallasi appointed in A.I.R.(C.C.W) and the Khallasi in All India Radio/Doordarshan India and both in the educational qualifications as well as the duties are different from A.I.R. regular staff and the A.I.R. (C.C.W) Work-charged staff. Even if the work is similar, the educational qualification is different, therefore, the claim for "equal pay for equal work" does not arise. Though the applicant/s in the O.A.'s have given various categories, qualifications, nature of duties and pay scales in Central P.W.D., he has not compared these categories with any other category at par with whom the applicant is seeking for equal pay for equal work.

5. It is a well known fact that equal pay for equal work is granted only when both the categories are on similar and identical footings and not otherwise. The main demand of the applicant/s appears to be disparity in the pay scales of Khallasis, Assistant Wireman, Assistant Pump Operator, etc., as compared to the equivalent post of Helper and Technicians in All India Radio and Doordarshan. It may be re-called that the Helpers and Technicians in the All India Radio and Doordarshan India are regular establishment, whereas the applicants belong to the work-charged establishment of All India Radio (C.C.W). Further, it

may be seen that since the duties and qualifications are different than others, they are given that scale not because they are work-charged employees. Promotions of the Khallasis in the All India Radio (C.C.W) is to the post of Assistant Wireman, then Wireman and then electrician, which is equivalent to 'technicians' in All India Radio, whereas further promotion of Khallasis in All India Radio is to the post of 'Helper' and then technician, thereby, it is clear that comparison between the two is not based on the materials available on records. Therefore, it is clear that both have got different rules for further promotion and cannot be equated with each other. The mode of recruitment for 'technicians' in the All India Radio is by 95% direct recruitment and 5% by promotion, failing which by direct recruitment. The 'Helper' in All India Radio and the Assistant Wireman in the All India Radio (C.C.W) are equal and both belong to Group 'D' category.

6. Despite there is a dissimilarity in payment, the applicants have not made any efforts to make representation or requested the respondent's department to seek for equal pay for equal work till now. As stated earlier, the Learned Counsel for the respondents have vehemently urged that educational qualification

between the two are different and they are not performing similar duties. The burden lies purely on the applicants to prove that they are performing similar duties, in the absence of which, it is not open to the Court to grant any relief to the applicants. Further, even though they are performing similar work, if the educational qualifications are different, they cannot claim parity in payment. On perusal of the C.P.W.D. Manual, Volume-III, it is made out that the method of recruitment for the post of 'Assistant Wireman' is 25% by direct recruitment and 75% by promotion on the basis of seniority-cum-citness whereas in All India Radio/Doordarshan India, the post of Khallasi is filled by direct recruitment and further promotion is Helper and Technician. Assistant Wireman is to be promoted to the post of Wireman and then electrician, etc. In the instant case, the educational qualifications are different, the responsibilities are different between the two categories and even the mode of recruitment is different, therefore, the payment cannot be equated with each other. In support of his contention, the Learned Counsel for the respondents relies upon the following decisions :-

(i) 1995(1) S.C. S&L Judgements Page-8
Sahib Ram V/s. State of Haryana & Others

wherein the Supreme Court held that the revised pay scale denied on the ground that he did not possess the required educational qualification does not amount to any illegality, thereby, the principle of "equal pay for equal work", grant commission, etc.

(ii) JT 1994(1) S.C. 574 -
Shyam Babu Verma & Others V/s. Union Of India & Ors.

wherein the Supreme Court held that the nature of work may be more or less same, but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable ..... and there was no reasonable basis to treat them separately in matters of payments of wages or salary.and then only it can be held that there has been a discrimination, within the meaning of Article 14 of the Constitution. In the facts of present case, there is no scope for applying the principle of 'equal pay for equal work', when the petitioners belong to a separate category, etc.

(iii) (1993)23 ATC 657 - State of Madhya Pradesh and Anr. V/s. Pramod Bhartiya & Others.

The Court held 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. The respondents have failed to establish th their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. They have also failed to establish that the distinction between their scale of pay and that of non-technical lecturers working in Technical Schools is either irrational and that it has no basis, or that it is vitiated by malafides, either in law or in fact.

(iv) (1993) 25 ATC 586 - State of West Bengal & Others Versus Madan Mohan Sen and Others.

Wherein the Court has held that it would be evident from a comparison of the nature of duties, responsibilities and functions of the Agragamies and firemen/leaders of Fire Service Department that they are neither same nor similar. The firemen and leaders are the members of the Fire Service Department whereas the Agragamies are members of West Bengal Civil Emergency Force

meant as an auxiliary force to assist the various Government departments and agencies in times of emergency and acute need, etc.

(v) State of Mysore V/s. P. Narasing Rao -
the question arose whether two different pay scales could be prescribed for the employees working in the same service on the basis of educational qualification. The government prescribed higher pay scale to matriculate tracers although the non-matriculates and matriculates tracers both were performing the same duties and functions. However, the Supreme Court held in that case that higher educational qualification is a relevant consideration for fixing different pay scales and the classification of two grades of tracers did not violate Article 14 or 16 of the Constitution.

(vi) (1988) 8 ATC 929 - State of U.P. & Others Versus J. P. Chaurasia and Others.

wherein the Supreme Court held that it does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work

may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission, etc.

(vii) 1995(2) ATJ 6 - DGOF Stenographers Association Versus Union Of India & Others.

The Full Bench of this Tribunal observed that difference in the procedure or mode of recruitment can be a valid ground for denying identical pay scales to those performing more or less same duties and responsibilities; mere equality in respect of work cannot be the sole criterion to determine the pay scale. Accordingly, it is observed that there is no violation of Article 14 and 16 of the Constitution and the principle of 'equal pay for equal work'.

7. Having heard the arguments of both the parties and on perusal of the pleadings, We are satisfied, that the contention made by the applicants is neither based on documentary evidence nor it is supported by the decisions of the Courts. Admittedly, their pay structure cannot be equated to that of the similarly placed staff in the All India Radio/Doordarshan India and the comparison between the two are not on equal footing. Apart

from the educational qualifications and the type of work performed by both the categories are dissimilar, the duties performed by the Khallasis in All India Radio (C.C.W) and All India Radio/Doordarshan are vastly different, which is clear from the pleadings of the applicants. Therefore, it is not open to the applicants to seek parity merely on hypothetical grounds that they are performing the same duties and the department in which they are working is one and the same, irrespective of the mode of recruitment, educational qualification and responsibilities. The question of equal pay for equal work would apply when the works performed by the two categories are one and the same and the responsibility of the work performed and discharged by them is one and the same. The employees in A.I.R. (C.C.W) are to be treated as artisans which consists of unskilled, semi-skilled and skilled, etc. whereas the employees in A.I.R./D.D.I., there is no such distinction. It is also not sufficient to say that the service conditions are similar. What is more important and crucial is, whether they discharge similar duties, functions and responsibilities? In all categories, there are different mode of recruitment, different educational qualifications and responsibilities, therefore, in our view, the contention of the applicants at the entry level that they should be equated to that of the similarly placed staff in the All India Radio/Doordarshan India has no relevance and therefore it is liable to be dismissed. Accordingly, we find that there is no merit in the O.As. and the same are dismissed. No order as to costs.

(P. P. SRIVASTAVA)
MEMBER (A).

(B. S. HEGDE)
MEMBER (J).

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