

ORIGINAL APPLICATION NO: 636.95

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 636/95

the 5<sup>th</sup> day of MAY 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. All India Salt Department Employees  
Union, Bombay Unit, through  
Shri Panaroo Hariram,  
General Secretary,  
for and on behalf of member constituent
2. Shri Bhikaji Sakharam Mhetar  
C/o Deputy Salt Commissioner, Bombay.  
Exchange Building, 4th floor,  
Bombay.
3. Shri Vinayak Maruti Vichare  
residing at Bhandup and employed as  
Sepoy at Wadala Salt Factory,  
Salt Test Lab. Near Antop Hill Post office  
Antop Hill, S.M. Road, Bombay. ...Applicants.

By Advocate Shri S.P.Saxena.

V/s

1. Union of India through  
Secretary, Ministry of Industry  
Department of Industrial  
Development, Udyog Bhavan,  
New Delhi.
2. Salt Commissioner,  
Government of India,  
Lavan Bhavan, 2-A Lavan Marg.,  
Jhalan Doongri, Jaipur.
3. Deputy Salt Commissioner,  
Government of India,  
Exchange Building, 4th floor,  
Sprott Road, Ballard Estate,  
Bombay. ...Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R

{Per Shri S.L.Jain, Member(J)}

This is an application under Section 19 of the  
Administrative Tribunals Act 1985 for direction to the

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respondents to comply the same pay scales and all other attendant benefits which is applicable to Sepoys and havildars in the Central Excise department with retrospective from 1.1.1986.

2. Till the month of August 1947 the department now known as Salt department was a part and parcel of Custom and Central Excise department under the Ministry of Finance, having a common cadre of all officer including the Inspectors, Sepoys and Hawaldars. All these posts were common and transferrable. After appointment of Special Committee in or about the month of August 1947, there was a bifercation of the then Custom and Central Excise department and Administration of Salt manufacturing was seperated. The staff existing and working in the Salt Administration was bron on the Central Excise cadars. The wage scale, other service conditions and amenities were the same for the workmen in Salt stations. After bifercation, which was in view of report of special committee workmen at that time were transferred to the Ministry of the Industry.

3. The applicants' case in brief is that the leaving conditions of the staff and the workmen at the Salt stations were most onerous then the staff and the workmen working in Central Excise. The Salt stations are located at the sea coast which are normally at a considerable distance from cities,towns, villages resulting thereby the workmen are deprived of normal civil amenities. The Sepoys and Hawaldars are doing the similar duties as their counter parts in the Central Excise Department. In Salt Dedpartment the work of Sepoys and Hawaldars is to guard the Salt fields from thefts, encroachments, unauthorised removal of Salt to prevent erasion, collection of cess and ground rent, assignment money, lease money while working under the inspectors.

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The Sepoys and Hawaldars employed in the Excise are working under the Inspectors for prevention of evasion of the Excise duties at the factories situated in towns and cities. A small section of sepoy and Hawaldars in Central Excise Department are required to handle fire arms while no fire arms are provided to employees in the Salt department. No employee in the Excise Department are required to use fire arms. In Customs and Excise department 15% of Sepoys and Hawaldars are employed on duties involving the use of fire arms but there is a common scale for all the Sepoys and Hawaldars in Customs and Excise Department irrespective of the fact whether they are handling fire arms or not, as prescribed by the Forth Pay Commission. The Sepoys and Hawaldars of Salt Department whose duty is to guard the Salt from theft and encroachment is much more difficult and onerous as they have to confront the unsocial elements without any aid of fire arms. Encroachments on lands belonging to Salt Department have become a regular phenomenon and it has become part and parcel of the duties of Group 'D' staff. Departmental officers especially Group 'D' are physically assaulted and injured by the encroachers who are aided and abetted by the antisocial elements. In both the departments Sepoys and Hawaldars are assisting the executive officers that is to say Inspectors, Deputy Superintendents in carrying out their function in the field formation and to act in accordance with the order of executive officers.

4. Under the recommendations of 3rd Pay Commission the Sepoys and Hawaldars in Salt Department and Central Excise Department were paid the same pay scales as was payable to other

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categories such as Sweepers come Scvangers and and sweeper cum gardner-scale being 196-3-220-EB-4-232 while the fourth pay commission has drawn the difference in duties of Sepoys and Hawaldars and other categories of Group 'D' namely Peons and sweepers.

5. Either due to non-application of mind or inadvertance on the part of Head of Salt Department, a special recomandations of a higher grade was made only for Sepoys and Hawealdars employed in the Excise department and not extended to Sepoys and Hawaldars in Salt Department. Therefore the Pay Commission was not informed about same duties of Sepoys and Hawaldars. The Sepoys and Hawaldars in Salt Department deserves similar treatment in view of principle of equal pay for equal work. The said anomaly was also not brought to the notice of the Government by the Head of the Department.

6. As the duties of Sepoys and Hawaldars are more oneours then Group 'D' staff Peons and others, principle of equal wages for equal work contained under Article 14 and 16 is violated. Hence this OA for the above said reliefs.

7. The learned counsel for the respondents relied on 1992 SCC (L&S) 221 State of M.P. and another V/s Pramod Bhartiya and others and argued that burden to establish right to equal pay is on the person claiming the same. We agree with the said proposition of law.

8. The said authority also lays down the proposition that the said principle is in applicable where distinction is based on qualitative difference in function and responsibilities, though qualification and service conditions of both categories as also status of two schools same.

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9. The learned counsel for the respondents relied on (1994) 27 ATC 524 State of W.B. and others V/s. Harinarayan Bhowal and others decided by the Apex Court on 16.3.1994 following the case of State of M.P. and another V/s. Pramod Bhartiya and others which lays down the proposition as under:

The principle of "equal pay for equal work" can be enforced only after the persons claiming satisfy the court that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat equal as unequals. Unless a very clear case is made out and the court is satisfied that the scale provided to a group of persons on the basis of the material produced before it amounts to discrimination without there being any justification, the court should not take upon itself the responsibility of fixation of scales of pay, especially when the different scales of pay have been fixed by Pay Commission or Pay Revision Committees, having persons as members who can be held to be experts in the field and after examining all the relevant material. It need not be emphasised that in the process undertaken by the court, an anomaly in different services may be introduced, of which the court may not be conscious, in the absence of all the relevant materials being before it. Till the claimants satisfy on material produced, that they have not been treated as equals within the parameters of Article 14, courts should be reluctant to issue any writ or direction to treat them equal, particularly when a body of experts has found them not to be equal.

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10. In the present case, as there is evasive reply of the respondents regarding before 1948 in respect of the fact that the Salt Department was a part and parcel of Custom and Excise Department under the Ministry of Finance having a common cadre of all officer including inspectors, Sepoys and Havildars, it is held that evasive reply deserves to be overlooked and the claim of the applicants in this respect stands established.

11. There is also no reply of the respondents in this respect that the matter was either not represented due to inadvertance or non application of mind, it is hereby held that though the respondents might have failed in their duties but the applicants who are directly affected did not take care of their own cause; whatsoever may be the reason, it is a fact that the IV th Pay Commission did not specifically dealt with the matter.

12. The repeal of Central Excise and Salt Act 1944 and Rules there under in no way affects the merit of the case of either party as the relief sought was in respect of earlier periods while repeal is on 23.7.1996.

13 It is true that earlier to 1948 the Salt Department was a part and parcel of Customs and Central Excise Department under the Ministry of Finance <sup>having a</sup> common cadre of Sepoys and Hawaldars. Sepoys and Hawaldars were transferred from one Department to another. Later on the Department was bifercated, the duties of Sepoys and Hawaldars - Cadre may be same but the duties cannot be similar - for the reason that the Sepoys and Hawaldars of Salt Dedpartment have to perform the duties in the field while the Sepoys and Hawaldars of Central Excise and Customs have to

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perform the duties at factories. Not only that both cadre of different departments have to perform their duties as prescribed under the relevant Acts and Rules thereunder.

14. The Sepoys and Hawaldars of the Salt Department and Customs and Central Excise may belong to the same class but their nature of work is not identical. It is not the qualification at the entry level or Recruitment Rules which is material for the decision of principle of equal pay for equal work, but it is the nature of the work which must be identical. We do not find that the nature of work of Sepoys and Hawaldars is identical with the nature of work of Sepoys and Hawaldars of Central Excise and Customs department.

15. In view of the decision relied by the learned counsel for the respondents (1994) 27 ATC 524 State of West Bengal and Others V/s Harinarayan and others decided by the Apex Court, we are of the opinion that the applicants are not able to satisfy that they have been discriminated while they are similar. As observed by the Apex Court the Tribunal should not take up responsibility of fixation of pay, specifically when different scale of pay has been granted by the Pay Commission or Pay Revision Committee having persons are members who can be held to be experts in the field and after examining all the relevant materials. Even the Vth Pay Commission report is not in favour of the applicant.

16. The correspondence between the applicants and the department does not <sup>give</sup> any right, even if they are recommended, <sup>for</sup> their grievance <sup>to</sup> be submitted to the superiors.

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17. In the result, we do not find any merit in the OA, it is liable to be dismissed and is dismissed accordingly with no order as to costs.

*S.L.Jain*  
(S.L.Jain)  
Member(J)

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*B.N.Bahadur*  
(B.N.Bahadur)  
Member(A)