

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1051/1995

DATE OF DECISION: 26/7/2001

Shri M.S.Sawant & 5 Ors.

Applicant

Shri V.S.Masurkar

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri R.K.Shetty

-----Advocate for
Respondents.


Coram:

Hon'ble Smt. Shanta Shastri, Member(A).

Hon'ble Shri Shankar Raju, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

see


(SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1051/1995
DATED THE 26th DAY OF July 2001

CORAM:HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)
HON'BLE SHRI SHANKAR RAJU, MEMBER(J)

1. Shri M.S.Sawant
2. Shri P.R.Bhosale
3. Shri A.V.Redij
Working as Supervisors,
in Embarkation Headquarters,
Docks Branch, Bombay.
4. Shri J.A.Oak
5. Shri S.B.Gawde
6. Shri D.L.Waingankar
Working as Tally Clerks
in Embarkation Headquarters
Docks Branch, Bombay.

... Applicant

On behalf of themselves and the
other persons working as Supervisors
and as Tally Clerks in the
Embarkation Headquarters, Bombay-

By Advocate Shri V.S.Masurkar

V/s.

1. Union of India,
through the Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi - 110 001.
2. The Additional Director
General of Movements,
Quarter Master General's
Branch, Army Headquarters,
DHQ P.O., New Delhi -110 011.
3. Col. Commandant,
Embarkation Headquarters,
New Bhawan, R.S.Kamani Marg,
Ballard Estate,
Bombay - 400 038.

... Respondents

By Advocate Shri R.K.Shetty

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(ORDER)

Per Smt. Shanta Shastri, Member(A)

The applicants belonging to two categories working in the Embarkation Headquarters Docks Branch, Bombay as Supervisors in the payscale of 1200-2040 and Tally Clerks in the payscale of 950-1500 have invoked the jurisdiction of this Tribunal for the following reliefs.

- a. that the Order dated 4/1/1994 of the Joint Secretary to Government of India in the Ministry of Defence (Exhibit 'G' hereto) be declared malafide and/or perverse and/or arbitrary and be quashed and set aside.
- b. that the Respondents be directed to grant the scale of Rs.1400-2300 to Tally Clerks and the scale of Rs.1600-2660 to Supervisors in the Embarkation Headquarters with effect from 1/1/1986 and grant consequent fixation and arrears and all other benefits.
- c. that it be declared that the Tally Clerks and Supervisors of Embarkation Headquarters are performing duties of a similar nature as those performed by the Shipping Inspectors of Eastern Railway and they are entitled to be paid in the same pay scales as the Shipping Inspectors are paid.
- d. that the respondents be directed to create adequate number of posts in the scale of Rs.2000-3200 to provide a channel of promotion to the Supervisors in the Embarkation Headquarters.
- e. that such other order or orders or direction be given as may be considered just and proper in the facts and circumstances of the case.
- f. that leave may be granted to the Applicants to file this Joint Application on behalf of all the Tally Clerks and Supervisors of Embarkation Headquarters, Bombay under Rule 4(5)(a) of the C.A.T. Procedure Rules, 1987.
- g. that the costs of this Original application and the order to be made thereon be provided for.

2. These applicants had earlier approached this Tribunal by filing OA-384/97 which was decided by order dated 14/1/91. The prayers were similar as in the present OA i.e to direct the

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respondents to allot the applicants the payscale of Rs.1600-2660 and 10% of these to categories in the payscales of Rs.2000 - 3200 to which Tally clerks be promoted according to seniority and suitability. Further fixation of payscale to be done from December 1985 namely the date of enforcement of the new scale given to Shipping Inspectors of Eastern Railway with reference to the Fourth Pay Commission Report as arrears w.e.f. 1/1/86. The relevant portion of the Tribunal's order reads as follows:-

11. After the post of Supervisors there appears to be no promotion post of Tally Clerks and Supervisors and there appears to be no reason why the Government will not create promotional avenue for them or provide selection grade for them and we trust that within six months the Government will create promotional avenues for selection grade for Supervisors who have been before us through this application. So far as the pay scale is concerned, as has been observed earlier it is undoubtedly squarely a matter which has to be considered by the expert body i.e. Pay Commission and Government. But in this case of the applicants it appears that neither the IIIrd Pay Commission nor the IVth Pay Commission specifically considered the demands though they had been agitating the matter. There is no Pay Commission now existing and accordingly the Government should consider their demand in the light of the facts stated by them or in the light of facts which have been existing and we hope that this consideration will be done within a period of six months from the date of the communication of the order and the Government will convey the same. However, we make it clear that if in the meantime the Industrial Tribunal before which certain proceedings are pending takes a particular decision which got the binding effect by that time the Government does not take a decision in respect of the pay on the direction given by us will not also stand in the way of the Industrial Tribunal to go ahead with the proceedings before it referred to above. With these observations this application is disposed of finally. No order as to costs.

12. The respondents should decide this matter and pass a speaking order, with reference to particularly the Petition dt. 28/11/1986 which was addressed to Additional Directorate General of Movements (Q Mov A) Quarter Master Generals

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Branch, Army Headquarter and a copy of which has been annexed to this application as Ex. 'J' for the retrospective effect that has been claimed, and a parity which has been claimed by the applicants with reference to the duties and responsibilities performed by them, including the parity of scale."

3. Thus, the respondents were required to decide the matter regarding the payscales and other benefits claimed by the applicants by passing a speaking order. Thereafter, a Contempt Petition No.36/93 was filed by the applicants therein for non compliance. The same was disposed of by order dated 8/12/93 by a direction to the respondents to have another look into the matter and pass appropriate orders by Competent Authority in the Ministry of Defence within a period of three months. Accordingly, the respondents passed a speaking order on 4/1/94 (the impugned order) pursuant to the decision of the Tribunal. The letter was signed by one Mr.Amitav Pandey, Joint Secretary in the Ministry of Defence. Again being dissatisfied the applicants approached the Tribunal by way of Contempt Petition No.108/94. It was urged therein that Shri Pandey had merely adopted the earlier order passed by Major General Shri Sabharwal, in all its details and there was no fresh consideration as was expected at the level of Government. The order was attacked on further ground of non application of mind, reliance on lies and being replete with inconsistencies. The Contempt Petition was heard and dismissed on the ground that no Civil Contempt had been committed as the respondents had complied with the Tribunal's order and had passed a speaking order. However, liberty was given to the applicants to move the Court by fresh application if they so desired. Accordingly, the applicants have moved the present OA. The prayers are no different and the grounds taken are also no different than those taken in Contempt Petition No.108/94.

4. The ire of the applicants is directed against the same letter of 4/1/94. According to the applicants, the Tribunal had directed vide judgement dated 14/10/91 to give higher scales and provide avenue of promotion. No opportunity was given to the Government to refuse the said benefits. In para-2 of the speaking order, apart from stating many irrelevant things, the authority who has passed the speaking order has deliberately recorded false statement as under:-

'The Fourth Pay Commission prescribed the pay scale of Rs.950-1500 for Tally Clerks and Rs.1200-2040 for Supervisors which has been implemented from 1/1/1986.'

Whereas the Fourth Pay Commission did not prescribe any scale of Pay for Tally Clerks and Supervisors. Para-3 of the Impugned speaking order discusses irrelevant matters like representation dated 13/10/83, addressed to the Secretary, Wage Board Act 1969, etc. The direction given by the Tribunal was to consider the demands of the applicant for allotment of payscales at par with the scales of pay enjoyed by the Shipping Inspectors of the Eastern Railway in the light of the repeated recommendations made by the Head of the Embarkation Headquarters, Calcutta and in the light of the recommendations made by the Highest authority on the side of the respondents and the abundant material available on record showing similarity of work and responsibilities between the applicants and Shipping Inspectors of Eastern Railway. The respondents deliberately omitted to do so. In para-3 again, the Joint Secretary concerned

states his own opinion contrary to all opinions hitherto expressed by the authorities on the Respondents' side and without explaining how the earlier opinions are wrong, how he considers the duties and responsibilities of the applicants as not being on par with the duties and responsibilities of Tally Clerks of Bombay Port Trust or the Shipping Inspectors of the Eastern Railway, Calcutta. Incorrect opinion of the signatory is recorded that the workload of Shipping Inspectors of Eastern Railway both qualitatively and quantitatively is far more onerous compared to the workload of Supervisors or Tally Clerks. It is not based on any material disclosed or discussed by him where as he is required to pass a speaking order. He records an important finding without any reasons. The respondents have deliberately ignored the settled legal position of equal pay for equal work on the basis of comparability of the work and responsibilities and not on the mode of recruitment.

The respondents side tracked and ignored the several letters sent by Embarkation Headquarters, Calcutta on the basis of which scales of pay at par with Shipping Inspectors ought to have been allowed to the applicants. In para-9 of the letter dated 13/9/91 has been referred to which deal with a totally different subject of insitu promotion to Group 'C' and 'D' employees. This has nothing to do with the Tribunals direction to provide promotional avenue to the Supervisors.

5. The respondents have flatly denied that they have not complied with the directions of the Tribunal. The respondents have taken the preliminary plea that the applicants had raised this issue of pay parity with Shipping Inspectors in several

forums and have prosecuted their claim six times earlier before filing the present OA and is an abuse of due process of law. After the decision dated 14/10/91 in OA 384/87, the applicants had filed two Contempt Petitions which were dismissed. There has been no material change in the situation to warrant filing of another original application after the decision of the respondents communicated vide letter dated 4/1/94. They failed three times before Labour Court, Industrial Tribunal and High Court of Mumbai before they approached the Tribunal. The present application therefore is a mere repetition of the earlier prayers in the earlier OA and therefore does not deserve to be entertained. Further, the demands of the applicants for parity in pay scales and promotion at par with that of Shipping Inspectors of Eastern Railway involves policy matter such as revision of scales of pay and creation of higher posts which fall within the domain of the Executive Government and is not for the Tribunal to interfere with. The learned counsel for the respondents has cited several judgements, whereby the Supreme Court has held that it is not for the Courts or Tribunals to interfere in policy matters. The learned counsel adds that in order to evade legal objection on the ground of resjudicata, the applicants have interchanged in the OA No.384/87 and OA 1051/95. The applicants are demanding the higher pay scales from 1/1/86 after having opted for Fourth Central Pay Commission scales of pay and having enjoyed them from 1/1/86, they cannot ask for revision of scale after 10 years. Thus, the application is barred by limitation, laches and resjudicata.

6. The Tally clerk was always equivalent to LDC and the Supervisor to UDC with the respondents. The Third Pay Commission

had prescribed the payscales of Rs.260-400 and Rs.330-560 to Tally Clerks and supervisors. These are the identical scales of pay for LDC and UDC of the department. The Fourth Central Pay Commission had not mentioned each and every category in its report, but the report indicates the corresponding scale in relation to the pre-revised scale only in that no posts including Lower Division Clerks, Upper Division Clerks or any other category of posts have been specifically mentioned while allocating revised scale of pay. A Tally clerk was freely interchangeable with Lower Division Clerks in the office of the Respondents depending upon the work requirements. The applicants inter changed their position as Tally Clerks and Lower Division Clerks and as Supervisors from time to time.

7. The respondents have also denied the contention of the applicants that their work is more onerous than that of other employees with identical payscales. The task of clearance work involving discernible duties and responsibilities which need thorough knowledge of rules and regulations ie. documentaion, Customs formalities, various claims, etc are performed by the Office Superintendent, Upper Division clerks, Lower Division Clerks, Accountant, Assistant Accountants of the respondents Department. Even Non Commissioned Officers and other Ranks of Indian Army, and their equivalent in Indian Air Force and Indian Navy are also working side by side with the Tally clerks and Supervisors in the clearance of imported defence cargo. Even Lower Division Clerks, Uppder Division Clerks, Office Superintendents, Assistant Accountants, Accountant and Armed Forces Personnel working with the Respondents are also detailed

on outdoor duties for liaison with Customs Department, Mumbai Port Trust, Shipping Companies, Clearing Agents, Railways, Air Cargo Complex, etc. The nature of duties performed and responsibilities discharged by the Tally Clerks and Supervisors and the Shipping Inspectors of Eastern Railway are not identical. The Shipping Inspectors do the entire clearance procedures including documentation, processing of bills of entry with Customs, payment of custom duty after classification, etc. All these duties are not performed by the Tally Clerks and Supervisors. Besides Shipping Inspectors in their initial grade are selected by a duly constituted selection board from the existing clerical staff in the pre-revised scale of 260-400 and 330-560 working in their department and having 10 years service in the Railways. According to the latest instructions, even the promotion in the initial grade of Rs.1400-2300 is made through selection test from amongst the senior clerks in the scale of Rs.1200-2000. The Respondents have considered the applicants request in great detail at the Government level and an elaborate speaking order explaining all the aspects of the matter was passed by Joint Secretary to Government of India vide letter dated 4/1/94.

8. The learned counsel submits that apart from the aforesaid letter of the Joint Secretary, the matter has progressed beyond this and was considered by the Vth Central Pay Commission. In para 63.36 the Pay Commission have recommended as follows:-

63.36 We have been informed the Supervisors' have no avenue of promotion. On perusal of the duties and responsibilities, recruitment pattern and requisite qualification, we find that, in the Railways, Shipping Inspectors are selected from among Depot Store Keepers, who are in the scale of Rs.1400-2300 and 33 1/3% of these posts are ...10.

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filled through direct recruitment of diploma holders. On the other hand, in the Embarkation Headquarters Supervisor is a promotion grade and there is provision for direct recruitment of matriculates with 3 years experience in the field at the level of Tally Clerks. Keeping these in view, we do not recommend any change in their existing pay scales. However, under provisions of ACP, Tally Clerks will get the scale of Rs.1200-2040 as first ACP scale and another higher scale of Rs.1400-2300 as second ACP scale. We also suggest that if the Ministry of Defence considers that enhancement of recruitment qualifications is required on functional grounds, the case for upgradation of pay scale may be considered subsequent to such enhancement.

9. Thus an expert body having considered the demands of the applicants there is no scope left now to differ with the recommendations of the expert body. It only endorses the stand taken by the respondents earlier vide their letter dated 4/1/94 and therefore the applicants have no case.

10. The learned counsel for the applicants vehemently argued that the respondents have failed to consider and analyse the detailed material placed before them by the applicants as well as their higher authorities. The learned counsel also relied on the judgement of Supreme Court in the matter of Randhir Singh V/s. Union of India and Ors reported at 1982(1) AISLJ 490 wherein a view was expressed that the principles of equal pay for equal work is deducible from Articles 14 and 16 of the Constitution and may be properly applied to cases of unequal scale of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. The judgement also held that the word 'Socialism' must atleast mean 'equal pay for equal work'. The learned counsel urged that though it is not the domain of the Tribunal to revise pay scales or fix new pay scales the Tribunal must look into the Principles of equal pay for equal work. The learned counsel also

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referred to the judgement in Dhirendra Chamoli and Anr V/s. State of Uttar Pradesh reported in ATR 1986 S.C. 172 "Equal Pay for work of Equal Value". The learned counsel, cited the judgement in the case of Jaipal and Ors. V/s. State of Haryana & Ors. reported in (1988) 7 ATC 771 in support of the doctrine of equal pay for equal work. It means similarity and not exactly the same work.

11. The learned counsel wanted to be assured that the respondents had really applied their mind to all the details furnished regarding the work of the Tally Clerks and Supervisors before passing the impugned order dated 4/1/94.

12. We have given careful consideration to the rival contentions. The respondents have averred that all the details were taken into consideration and that it is not correct to say that the duties and responsibilities of the applicants are same or more than onerous than those of Shipping Inspectors. The applicants had asked for the underlying record in the order dated 4/1/94 to be produced. Accordingly, the respondents have produced the relevant files. We have perused the relevant portion and are satisfied that the speaking order passed by the respondents is after examining the request of the applicants in depth. A detailed comparison of the work of the Shipping Inspectors was carried out. At the the Tribunal passed the order on 14/10/91 in OA 384/87, the Tribunal had directed the respondents to consider the demand of the applicants in depth because according to the Tribunal in Neither the Third Pay Commission nor the Fourth Pay Commission had specifically

considered the demands of these applicants independently and the Tribunal also found that there was no other expert body appointed at that time. However, we now find that thereafter the Vth Pay Commission did consider the applicants case specifically but and did not choose to recommend any higher payscale. There is a specific paragraph as already pointed out in the report of the Vth Pay Commission dealing with the payscales of the applicants. Thus, we hold that it is no longer for this Tribunal to pass any fresh directions in the matter. The recommendations of the Vth Pay Commission have already been accepted by the Government and therefore we see no reason to interfere with the impugned order.

13. In our view, therefore no relief can be granted in this case. Accordingly, the OA is dismissed without any orders as to costs.

S. Raju

(SHANKAR RAJU)
MEMBER(J)

Shanta Shastri

(SHANTA SHASTRY)
MEMBER(A)

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