

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:295/98

DATE OF DECISION: 17th January 201

Shri R.K. Sanklecha and four others Applicant.

Shri G.K. Masand Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri R.K. Shetty Advocate for
Respondents

CORAM

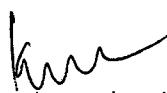
Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, 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.


(Kuldip Singh)
Member (J)

NS

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:295/98

the 17th day of JANUARY 2001.

CORAM: Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastray, Member (A)

1. R.K.Sanklecha
Residing at
T/D/10/57, CGS Colony,
Ghatkopar(West),Mumbai.
2. M.S. Gaur
Residing at
2412/201, Sector VI,
Kane Nagar, Antop Hill,
Mumbai.
3. K. Surendram
Residing at
D/18, Rashid Mansion,
Near Colaba, Mumbai.
4. M.Kunhambu
Residing at
5 Chitralekha,
Near R.C. Church, Mumbai.
5. C.M. Markose
Residing at
254/1, Alaka,
Sion (West), Mumbai.Applicants.

By Advocate Shri G.K.Masand.

v/s

1. Union of India through
The Secretary in the
Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief
Army Head Quarters
Kashmir House,
DHQ PO, New Delhi.Respondents.

By Advocate Shri R.K. Shetty.

k

...2...

CHARTER OF THE LIBERTY TRIBUNAL
HUMAN RIGHTS

CERTIFICATE OF AUTHENTICATION

Look to day 21 of

(C) Denis Giblin Member No. 121

(A) Stephen Spender Member No. 112

for the purpose of certifying that the above-named persons are members of the Charter of the Liberty Tribunal.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

That the above-named persons are members of the Charter of the Liberty Tribunal is certified by the undersigned.

ORDER
{Per Shri Kuldip Singh, Member (J)}

The applicants of this OA belong to Group "B" of Military Engineering Service. On the basis of the Doctrine of "Equal pay for Equal work", ^{they} are claiming pay parity with the officers of Group "A" service in the pay scale of Rs. 8000 -13500 with effect from 1.1.1996 and are claiming arrears. They also want to be placed in Group "A" service.

2. Facts in brief are, the cadre of Military Engineering Service (MES) comprise of 50% of Army officials and 50% of Civilian gazetted officers. Thus 50% of Civilian officers are further divided. Partly they are appointed as Asstt. Executive Engineer (AEE) directly through UPSC and belong to Group "A" and partly Asstt. Engineer (AE) in Group "B" who are promoted from departmental candidates of the rank of Superintendents (B/R) (E/M). It is further stated that prior to introduction of the post of AE in group "B" in MES, the post of Asstt. Garrison Engineer was held by AEE who was either appointed as a direct recruit or on promotion from Group C to A.

3. Further, prior to introduction of post of AE in Group "B" the ratio of promotion to the rank of EE was as AEE to AE on 1:1. Thus 50% EE were filled by AEE (Group "A") and 50% from the cadre of AE (Group "B"). However the post of Assistant Garrison Engineer could be manned by either AEE or AE.

h

4. It is further stated that with the introduction of rules known as Indian Defence Service of Engineers (Recruitment and condition of service) Rules 1991 ratio has been changed. As per new ratio 33 1/3 % are to be filled from Group "B" AE and 66 2/3 % from AEE Group "A". Thus the applicants emphasized that the performance and duties by both AE as well as AEE is the same. It is also stated that they have the same power, responsibilities and duties also.

5. Despite all this it is stated that applicants are placed in Group "B" whereas their counter parts who are directly recruited are placed as Group "A". Thus they are being discriminated and are being prejudiced and have been suffering humiliation apart from suffering monetary loss which is violative of Article 14 and 16 of the Constitution of India.

6. Applicants also submit that right from 3rd Pay Commission onwards they are suffering disparity in pay though they exercise identical power, duties and functions etc.

7. It is further submitted that during the pendency of OA, Respondents with a malafide intention to deny the relief to applicants have issued another notification and have created another category of Asstt. Engineer Grade I and AE grade II in group "B" service and divided the existing cadre. Grade I has become promotional post for Grade II and further promotion to the post of EE has been restricted to AE Grade I. They have also prayed for quashing of the same after amending the OA.

km

8. In this back ground the applicants have claimed following relief:

(a) That this Hon'ble Tribunal will be pleased to hold and declare that applicants and officers similarly placed like the applicants, working as Assistant Engineer are grossly discriminated in being designated as Assistant Engineers and placed in Group -B Service vis-a-vis direct recruit Assistant Garrison Engineers who have been placed in Group -A Service, in higher scale of pay and designated as Assistant Executive Engineer.

(b) That this Hon'ble Tribunal will be graciously pleased to hold and declare that on account of shouldering identical responsibilities discharging identical functions and exercising identical powers, applicants are entitled to be placed in the same pay scale as the direct recruits, working as Assistant Garrison Engineer vis. Group - A.

(b1) That this Hon'ble Tribunal will be graciously pleased to call for the records and proceedings leading to the issue of the impugned Notification dated 19.1.2000 (Exh.I) and after going through the legality or otherwise thereof this Hon'ble Tribunal will be graciously pleased to quash and set aside the same.

(c) That this Hon'ble Tribunal will be pleased to direct the respondents to place the applicants and all other officers similarly placed like the applicants to Group - A Service in the pay scale of Rs. 8000 - 13500 with effect from 1.1.1996 and pay to them arrears to which they would become entitled on that basis.

9. The respondents are contesting the petition, they submit that prescribing of pay scale to AE and AEE is a policy matter which is the executive function of Government of India and not of the Tribunal. So the matter cannot be adjudicated.

10. Respondents also submit that AEE are promotee officers from the grade of Superintendents, whereas AE are direct recruits. It is also submitted that there is a vide difference as far ^{as} qualification for eligibility is concerned.

11. Respondents further pay that 5th Pay Commission has not recommended even direct promotion of Group "B" officer to STS scale of EE. Rather 5th CPC has recommended the promotee officers be ranked through a separate pre-revised scale of Rs. 2500 - 4000 which had resulted in creation of AE Grade I and AE Grade II.

12. Respondents further state that there is ^{no} ~~ir~~ comparison between AEE and AE. As for Group "B", post of AE is culmination of their career whereas for direct recruit, post of AGE is a training for them as they are expected to discharge higher responsibilities.

13. It is denied that applicants are being discriminated in any manner on practice of having two different pay scales for employees recruited through the different streams is prevalent in number of departments.

14. The 5th CPC and earlier Pay Commissions had examined the case of applicants and whatever pay scale were recommended were granted to applicants and as such it is ^{that} ~~prayed~~ OA be dismissed.

15. We have heard the counsel for both the parties.

16. The main thrust of arguments of the applicant is based on the facts that since power, function, duties and responsibilities of both AE (Group B) and AEE (Group A) are the same then the applicants are also entitled to be placed in group A and the same pay scale.

17. To counter the contention of respondents regarding eligibility qualification for (Group B) AE and (Group A) AEE, the counsel for applicant submitted that experience gained by promotee to reach the level of AE equalises the qualification ground taken up by the respondent.

18. Counsel for the applicants further contended that, since there is no denial about the exercise of power and functions being same as that of Group 'A' employees then why that status and pay be denied to applicants?

19. As regards the consideration of case by 5th CPC is concerned the counsel for the applicant submitted that the case of the applicant had not been properly represented and even while implementing the recommendation, The 5th CPC had recommended a higher stage of pay scale to applicants Rs. 2500 - 4000 whereas pre-revised scale of Group "A" was Rs. 2200 - 4000. But while implementing the scale Rs. 2200 - 4000 has been given replacement scale of Rs. 8000 - 13500 whereas scale of Rs. 2500 - 4000 has been given the pay scale of Rs. 7500 - 12000. Thus the new notification is totally malafide one and had been issued to defeat the OA.

20. The counsel for the respondents in reply to this submitted that there is a marked difference as far the qualification at the level of recruitment of both services is concerned. So in such like case; different pay scale can be fixed.

21. Besides that learned counsel for respondents had relied upon various judgements which suggest~~s~~ that grant of pay scale is the function of Expert bodies like Pay Commission and Govt. Policy and the Court should not interfere. For this purpose the counsel for the respondents placed reliance on the following judgements.

1. Union of India and Ors.
V/s
P.V. Hariharan and Ors. JT 1997(3) SC 569
2. Sita Devi and Ors. etc.
V/s
State of Haryana and Ors. JT 1996(7) SC 438
3. State of Haryana and ors.
V/s
Jasmer Singh. 1997(1) SLR 143(SC)
4. Union of India and ors.
V/s
Pradip Kumaar Deo. 2000(5)SLR(SC) 764

All these judgements in one voice say that the principle of "Equal pay for Equal work" is not always easy to apply. Since there are inherent difficulties in comparing and evaluating work done by different persons in different organisations or even in the same organisation.

22. In any case the decision of the Hon'ble Supreme Court in case of Sita Devi and ors V/s State of Haryana (Supra) ~~u~~ it has been held

"Article 14 No discrimination in higher pay scale on the basis of educational qualifiction"

"Classification on the basis of educational qualification has been always been upheld by this Court as reasonable and permissible under Article 14", permits the respondent to have different pay scales for Group (B) AE and Group (A) AEEs.

JK

23. In this case also admittedly there is difference in the qualification for the purpose of considering eligibility. So both the groups cannot be compared.

24. In the case of Union of India V/s P.V. Mariharan and Ors. the Hon'ble Supreme Court specifically observed

" It is the function of the Govt. which normally acts on the recommendation of Pay Commission. Change of pay scale has a cascading effect. Tribunal should not interfere and should realise pay fixation is not a function of Tribunal"

25. Again in Union of India V/s Pradip Kumar Deo, Hon'ble Supreme Court stated Courts should normally leave such matters for the wisdom of Administration except the proper cases of hostile discrimination.

26. In this case we do not find any case for hostile discrimination. Though power and functions of incumbents of both services are same but at the same time they form different groups also. Their method of recruitment is also different. Their basic qualification are different which itself is a reasonable ground for different classification which is an impediment for comparing both the classes in the matter of pay and treat them equal for the purpose of grant of pay scales.

27. As regards the introduction of new group as AE Grade I ^h and Grade II ^{is} concerned same is in accordance with ~~recommendations~~ ^{recommendations} of 5th CPC rather it is a follow up action of the recommendation

of 5th CPC. The same has also been approved by Government of India. The respondents have simply acted upon the recommendation of Pay Commission. This also does not violate any fundamental right of the applicants.

28. The learned counsel for the applicant has also relied upon a judgement of Hon'ble Supreme Court 1991 SCC (L & S) 621 Grih Kalyan Kendria Workers Union V/s Union of India and others and submitted that Hon'ble Supreme Court in this case was of the view if there is a reasonable similarity then there is a case of "Equal Pay for Equal work". Whereas in the case of applicants there is not only similar function and duties rather there are identical power and functions exercised by both the groups. But we find that in view of the judgement of Sita Devi V/s State of Haryana (Supra), the ruling relied upon by the learned counsel for the applicant does not help the applicants.

29. Thus considering from all the angles, we are of the opinion that OA is devoid of any merits. As such same is hereby dismissed. No costs.

Shanta Shastray
(Ms. Shanta Shastray)
Member (A)

Kuldeep Singh
(Kuldeep Singh)
Member (J)