

(87)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.354/90.

Date of Judgment 20.2.1992.

1. M.P.Sarma
2. D.Swamy
3. T.Satyanarayana
4. Asi Reddy
5. A.Narasinga Rao
6. B.Satyanarayana
7. B.Shankar Rao
8. G.Laxmana Rao
9. S.Koteswara Rao
10. C.Malles
11. V.Pentaiah
12. G.Yadagiri
13. T.Laxmaiah
14. Anil Kumar
15. P.Pentaiah
16. B.S.Mohan Rao
17. P.Dathathreya
18. Thaher
19. M.A.Rasheed
20. Hameed Khan
21. A.S.Alphonso
22. A.Raheem
23. Michael Francis
24. B.P.Yadi Reddy
25. J.S.Narasing Rao
26. M.Ravindran
27. G.B.Satyanarayana
28. R.Rajeswara Rao
29. G.Sampath
30. B.P.Kumar
31. B.Vijaya Raj
32. M.Rajendra Prasad
33. G.Gopinath Pillai
34. Manohar Rao
35. K.Hanumantha Rao
36. G.Narsing Rao

.. Applicants

Vs.

1. Union of India,
Rep. by its Secretary,
Min. of Defence, New Delhi.
2. Engineer-in-Chief,
Army Headquarters, New Delhi.
3. Chief Engineer,
Southern Command,
Military Engineering Service,
Pune, Maharashtra.
4. Command Works Engineer,
Military Engineering Service,
Mudfort, Secunderabad. .. Respondents

Counsel for the Applicants : Shri R.VijayanandanReddy

Counsel for the Respondents: Shri N.Bhaskara Rao, Addl. CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member (A)
Hon'ble Shri T.Chandrasekhar Reddy : Member (J)

{ Judgment as per Hon'ble Shri R.Balasubramanian, Member(A) }

This application has been filed by Shri M.P.Sarma & 35 others under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, Rep. by its Secretary, Min. of Defence, New Delhi & 3 others. The relief sought for, is to set aside the order of the 2nd respondent made in his proceedings No.90237/1389/A/EIC(3) dated 26.6.87 and direct the respondent to effect the fitment of Refrigeration Mechanics (RMs for short)/Refrigeration Fitters (RFs for short)/Central Plant Operators (CPOs for short) in the pay scale of Rs.330-480 w.e.f. 16.10.81 and to pay all the past arrears with interest @ 18% p.a. thereof.

2. This application has a fairly long legal history and finally in Writ Appeal No.623/89 the Andhra Pradesh High Court directed the applicants to approach this Tribunal stating that they had no jurisdiction and that is how this application is before us.

3. It is submitted that the applicants are working as RMs in the Military Engineering Service (MES for short) under the 3rd respondent at Secunderabad. The pay scales of Central Government employees were revised by the acceptance of the recommendations of the III Pay Commission. As there were many anomalies in revising the pay scales of the Industrial employees, the Govt. of India appointed a committee known as Expert Classification Committee (ECC for short) for suggestion, revision and rationalisation of Industrial workers. The committee's recommendations were accepted by the Govt. of India and proceedings were issued under letter No.F1/80/C/ECC/IC dated 16.10.81. The 1st respondent in his letter dated 11.5.83 stated the revised scales and fitments in Annexure III thereto. It is claimed that according to this, the RMs are to be shown in the scale of Rs.330-480. It is contended that the applicants are all discharging the same duties of RMs, but they are treated ^{only} as skilled grade and

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they are put in the pay scale of Rs.260-400. It is contended that when they are discharging the same work as discharged by other mechanics they should be treated as Highly Skilled Gr.II RMs in the scale of Rs.330-480. It is also submitted that the post of Motor Pump Attendants (MPAs for short) was the feeder cadre for the post of RMs. While the pay scale of MPAs is now ^{raised to} Rs.260-400 the pay scale of RMs is ^{raised and only} ~~also~~ placed in the same bracket viz: Rs.260-400. It is their grievance that ~~even after~~ ^{revision of pay scales} ~~promotion~~ the RMs are being treated on par with MPAs for the purpose of pay scale. Earlier there was a differential between the pay scale of the MPAs and the RMs. Aggrieved, the applicants had been representing for placement in the scale of Rs.330-480 without success. Hence this application.

4. The respondents have filed a counter affidavit and oppose the application. According to them, a RM in the initial grade is only a skilled category and not a highly skilled category. Due to a misrepresentation of the provisions of the Govt. of India letter dated 16.10.81 referred to, the pay of the RMs was incorrectly fixed in the Eastern Command in the scale of Rs.330-480. The error was subsequently rectified and when that was done, some aggrieved persons approached the Calcutta Bench of this Tribunal which dismissed the application indicating that they have been correctly fixed in the scale of Rs.260-400. The respondents also dispute that the duties discharged by the skilled RMs and the highly skilled Gr.II RMs are the same. It is pointed out that promotion from the skilled grade to the highly skilled Gr.II is done in accordance with recruitment rules and after passing prescribed trade test. As regards the MPAs, the respondents stated that the trade of MPAs is no longer a feeder cadre to the post of RMs. For that matter, when they rationalised the pay structure a number of readjustments had been done and the mere fact that the MPAs are brought on par with RMs is not enough reason for the RMs to be placed in a higher scale. It is contended that the duties of the MPA are quite ^{different and} ~~distinct~~ ^{from} ~~than~~ those of RM and RM has no supervisory role over the MPAs.

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5. We have examined the case and heard the learned counsels for the rival sides. In the pleadings as well as in the course of the hearing the learned counsel for the applicants stressed on the following points:

- (a) Earlier there was a scale differential between MPA and RM. Now that MPA has been elevated to the scale of Rs.260-400, RM should correspondingly be pushed up to maintain the level difference. It was his argument that it was for this purpose the Rs.330-480 scale was introduced.
- (b) RMs in skilled and highly skilled Gr.II perform the same type of duties and, therefore, there should be no difference in the scales. The promotion from skilled to highly skilled Gr.II is done, according to them, by the respondents in an arbitrary manner and this should further prove that there is no difference in the nature of duties and, therefore, the scales of pay should be the same.

6. Taking up the first contention, we do not see how the applicants can take the plea that at all times the RMs should be placed above the MPAs. When the MPA was the feeder cadre to the post of RMs, there could be a difference in the scales of pay. Should it still continue when the cadre of MPAs has ceased to be a feeder cadre to the post of RMs? No. That the MPA is placed in the scale of Rs.260-400, cannot be a reason to place the RM in a higher scale. The creation of an intermediary scale of Rs.330-480 is to ^{provide} ~~find~~ promotional outlets for ~~highly~~ skilled ~~MPAs~~ RMs after due process in accordance with recruitment rules, and this scale is not ~~seen to be~~ created just to accommodate ^{RM,} because the MPAs had been brought on par with them.

7. Taking up the second contention, the applicants argue that the duties of skilled and highly skilled Gr.II are the same and if the scales are not the same there will be discrimination attracting Article 14 of the Constitution.

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They have cited the following 4 cases:

- (1) AIR 1983 (SC) 130 - Case of D.S.Nakara Vs. Union of India.
- (2) AIR 1987 (SC) 2049 - Case of Bhagwandas Vs. State of Haryana regarding equal pay for equal work.
- (3) AIR 1988 (SC) 191 - Case of J.K.Cotton & Spinning Mills Vs. Union of India.
- (4) AIR 1988 (SC) 1504 - Case of Jaipal Vs. State of Haryana regarding equal pay for equal work.

Of these, the case at item (3) is on a different subject.

The rest, ^{excepting Sl(1) which is not relevant} ~~all~~ relate to the Central theme "Equal pay for equal work". The respondents on the other hand contend that there is a difference in duties between skilled and highly skilled Gr.II. There are recruitment rules for it and trade tests are prescribed. We find from letter dated 4.7.85 (Annexure X to the reply) item (3) that trade tests are prescribed. Such being the case, it has to be accepted that there is qualitative difference in the duties of the two levels. The learned counsel for the applicants produced 3rd party affidavits by 4 persons. They were like the applicants before us. They were dropped out of the O.A. because during the pendency of the earlier writ proceedings they were placed in the scale of Rs.330-480 which is now sought for by the applicants. It is stated by them that they continue to discharge the same type of duties. We do not attach any significance to the 3rd party affidavits in the face of categorical averments supported by relevant orders. Mere similarity of duties is not enough. The job content, level of responsibility and quality of work are among many other factors that have to be taken into account while fixing pay scales. These are jobs that can be handled by expert bodies who can properly evaluate the jobs and the courts can hardly do this type of job.

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8. We shall now come to the legal position of the case.

The respondents have cited the following 2 cases:

(1) II (1988) ATLT (SC) 616.

(2) AIR 1990 (SC) 335 - Case of Supreme Court Employees Welfare Association Vs. Union of India.

9. Regarding item (1), the Hon'ble Supreme Court had observed that where there is a qualitative difference in the performance among grades, there cannot be parity. It is for the management to evaluate and not for the court to determine.

10. Regarding item (2), the Hon'ble Supreme Court had observed that although the doctrine of 'equal pay for equal work' does not come within Art.14 as an abstract doctrine, but if any classification is made relating to the pay scales and such classification is unreasonable and or if unequal pay is based on no classification, then Art.14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work. In other words, where unequal pay has brought about a discrimination within the meaning of Art.14 it will be a case of 'equal pay for equal work', as envisaged by Art.14. If the classification is proper and reasonable and has a nexus to the object sought to be achieved, the doctrine of 'equal pay for equal work' will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of discrimination under Art.14, the abstract doctrine of 'equal pay for equal work', as envisaged by Art.39(d) has no manner of application, nor is it enforceable in view of Art.37.

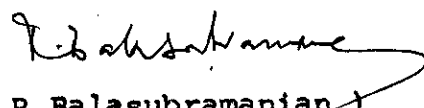
11. In addition, 4 judgments of 3 Benches of this Tribunal were produced before us. We find an extensive coverage of ^athe ~~the~~ similar case in the judgment dated 27.9.88 of the Calcutta Bench in their T.A.No.516/87 (Annexure III ^{to} of the counter affidavit).

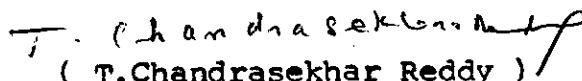
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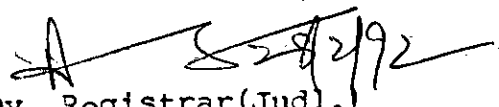
The Bench dismissed the T.A. Another judgment dated 27.9.88 to which one of us was a party, was on the same lines (O.A. No.143/87 and O.A.No.319/87). By a decision dated 9.2.88 in their T.A.No.153/87, the Madras Bench sitting at Ernakulam directed the respondents therein to finalise the case within 3 months thereof. The Delhi Bench by its decision dated 30.7.91 in their O.A.No.315/87 directed the respondents therein to consider the case of the applicants.

12. In view of the above, we do not want to interfere in the case and dismiss the O.A. with no order as to costs. This, however, does not preclude, if a decision had not already been taken, the respondents revising the scale of RMS upwards if, on examination, the recommendations of the Workstudy Group are approved by the Govt. of India.

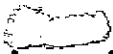

(R.Balasubramanian)
Member(A).


(T.Chandrasekhar Reddy)
Member(J).

Dated: 20th February, 1992.


Dy. Registrar(Judl.)

Copy to:-

1. Secretary, Ministry of Defence, Union of India, New Delhi
 2. Engineer-in-Chief, Army Headquarters, New Delhi.
 3. Chief Engineer, Southern Command, Military Engineering Service, Pune, Maharashtra.
 4. Command Works Engineer, Military Engineering Service, Mudfort, Secunderabad.
 5. One copy to Shri. R. Vijayanandan Reddy, Advocate, CAT,Hy
 6. One copy to Shri. N.Bhaskar Rao, Addl. CGSC, CAT, Hyd-bad
 7. One  copy to D.R(J) CAT, Hyd.
 8. Copy to all Reporters as per the ~~list~~ list of CAT, Hyderabad Bench.
 9. one spare copy.
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V.C.

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY: MEMBER (JUDL)

DATED: 28/2/-1992

ORDER/JUDGMENT:

R.A/C.A/ M.A.N.

in

O.A.Nc.

354/90

T.A.NO.

(W.P.NO.)

Admitted and interim directions
issued.

Allowed

Disposed of with directions.

Dismissed ✓

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ Rejected

No order as to costs.

