

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAMNUR JODIPUR BENCH, ~~GOVERNOR~~ JAMNUR

May 13/11
13/11

Hx (11)

13/11

O.A. No. 346/1997

188x

T.A. No.

DATE OF DECISION 20/11/02

Dinesh Kumar and Others Petitioner

Vinod Goyal Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Sanjay Pareek Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

The Hon'ble Mr. A. P. Nagrath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

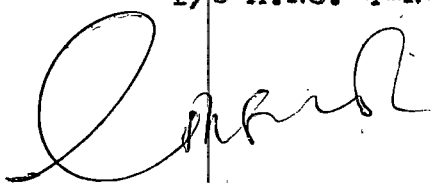
(A. P. NAGRATH)
Administrative Member

(G. L. GUPTA)
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR.

Original Application No. 346/97

1. Dinesh Kumar Sharma, S/o Shri Ram Bilash Sharma
r/o House No. 4-Gha-7, Mahaveer Nagar-III, Kota.
2. Sukhdev, S/o Shri Gopi Lal Ji, r/o Opp. to
Middle School, behind Marshi Mata Temple.
3. Murlidhar Tiwari, S/o Shri Ram Karan,
r/o behind Sangam Pan Bhandar, Shivpura Crossing
Kota.
4. Bhupendra Singh Man, S/o Shri Jagdeep Singh Man
r/o Gr. No. 9/1 MES Colony, Kota.
5. Ram Niwas, S/o Shri Kanhiya Lal,
r/o 308/4 near GTQUL Line Pump House
MES, Kota.
6. Hanuman Prasad, S/o Shri Jagganath
r/o H.No. 341, Nayapura Kota.
7. Nasir Hussin, S/o Shri Abdul Hussin
r/o Mukadam Saifi Colony, Chotti Mazid,
Kishorepura, Room No. 10, Kota.
8. Chandra Mohan Jayant, S/o Shri Mathura
Lal Jayant, r/o H.No. 216, Keshawpura
Sec. 6, Kota.
9. Surendra Kumar Sharangi S/o, Late Shri Basanti
Lal Ojha, r/o 8/1 MES Colony, Station Road,
Kota.
10. Ramesh Chandra Sen, S/o late Shri Kalyan Mal
Sen, r/o No. 33/3 MES Colony, Army Area
Dadwara, Kota.
11. Radhey Shyam Sharma, s/o Shri Kanhiyalal Sharma
r/o 23/54 Sarai Kayasthan Kota.
12. Umar Singh, s/o Shri Suraj Singh
r/o MES Colony, Nehru Park, Maharaja Land
Station Road, Kota.
13. Girdhari Lal Yogi, S/o Shri Bhanwar Lal Yogi
r/o H.No. 4-N-5 Mahavir Nagar III Kota.



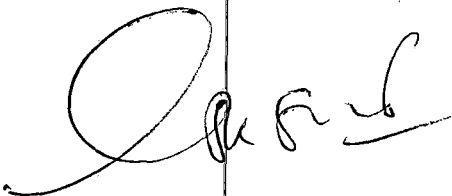
14. Shiv Prakash Nagar, S/o Shri Ram Kalyan Nagar,
r/o No. 6-S-4, Kota.
15. Aditya Kumer Shastri, S/o Shri Prabhu Lal Ji Shastri
r/o Haldion Ki Brahampuri, Purani Dhan Mandi Kota.
16. Devendra Singh Hada, S/o Shri Bhanwar Singh Hada
r/o 853, Shastri Nagar, Bada Bhawan Dadabari
Kota.
17. Jitendra Singh Mastana, S/o Shri Gopal Lal
No. 23, Sarai Ka Sthan, Kota
18. Girraj Prasad Sharma, S/o Shri Devaki Nandan Sharma
r/o 8/2, MES Colony, KES Kota.
19. Kamhiya Lal, S/o Shri Ram Narayana Ji,
Near Power House, Malipada, Naya Pura, Kota.
20. Kishan Lal, S/o Shri Dokhri Lal
Nayapura Power House, Near Mataji Ka Chowk
Kota.
21. Ram Sahai, S/o Shri Phool Chand,
Near Shop of Kathu Khati, Khatik Mohalla
Gandhi Nagar, DCM, Kota.
22. Bheru Lal, S/o Shri Bhawani Ram, r/o 1/4
MES Colony, Kota.
23. Ulhas Mahapati Chawrerar, S/o Shri Mahapati Chawrerar
r/o No. 4-2-3, Talwandi
Kota.
24. Bal Mukand, S/o Shri Ram Narayan, r/o
Near Khai Road, Sobhgya Furniture House,
Khai Road, Kota.
25. Bhwesh Kumar Saxena, r/o No. 3, Sarswati Colony
Call No. 8, Baran Road, Kota.

: Applicants.

rep. by Mr. Vinod Goyal : Counsel for the applicants.

-versus-

1. Union of India through the Engineer-in-chief
Army Head Quarters, Military Engineering
Services, Keshar House, New Delhi.
2. Commander-in-Chief Engineer, Southern Command
MES, Pune.



3. Chief Engineer (Jaipur Zone), MES Power House, Bani Park, Jaipur.
4. Commander Works Engineer, MES, Power House, Road, Bani Park, Jaipur.
5. Garrison Engineer, MES, Near Circuit House, Kota.

: Respondents.

rep. by Mr. Sanjay Pareek : Counsel for the respondents.

CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member.

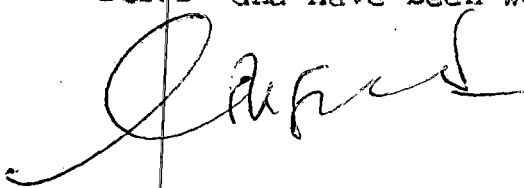
Date of the order: 20.11.02

Per Mr. Justice G.L.Gupta

ORDER

Twenty five applicants, who are the civilian employees in the various offices of the Military Engineering Services (MES for short) seek higher pay scale, which is being paid to the employees in the Central Public Works Department (CPWD for short). Their claim raised by way of notice was rejected by the letter vide communication dated 27.2.97 (Annex. A.1).

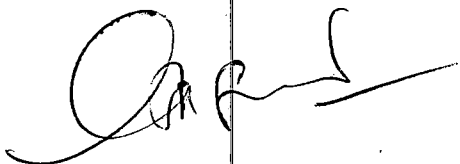
2. It is averred that the educational qualification required for the posts, mode of recruitment, functions and duties discharged by the applicants are the same as that of the employees in CPWD, yet the applicants have not been granted the same scale of pay. It is stated that the applicants are Diploma Holders in ITI/ TCTVT and have been working as Motor Pump Attendant,



Lineman, Wireman, Welder, Pipe Fitter, Carpenter etc for the last more than 15 years and in some cases for more than 20 years, but they have not been given promotions as there are no promotional avenues in the Department. It is averred that the applicants are being paid in the scale of pay of Rs.950-20-1150-EB-1150, while their counter-parts in other Central Government Departments are getting pay in the scale of pay of Rs.1200-30-1440-EB-30-1800 and thus the applicants are being discriminated and there is violation of Articles 14 and 16 of the Constitution of India. It is further averred that there being no promotional avenues, it has led to stagnation in service. It is pointed out that the Supreme Court has held in a number of judgements that there has to be promotional avenues. It is further pointed out that All India MES Civilians Draftsman Association, had filed O.A. No. 1020/88 in the Principal Bench which was decided on 12.8.91, directing the respondents to grant the pay scale to the Draftsman Gr.I and Gr.II as was being granted to Draftsman Gr.I and Gr.II in CPWD. It is prayed that the respondents be directed to grant the pay scale of Rs.1200-1800 initially in Technical Group 'C' to all the applicants with consequential benefits and that the respondents be directed to provide promotional avenues to the applicants in their respective posts.



3. The respondents in their reply have resisted the claim of the applicants. Denying that there is stagnation it is stated that the applicants have got promotions. It is averred that promotional avenues are available to MES employees on passing departmental trade test. It is also averred that under the Assured Career Progression Scheme communicated vide letter dated 9.8.99 employees who could not get promotion after completion of 12 years get higher pay scale and further after 24 years of service get another upgradation of pay scale. It is pleaded that the application is liable to be dismissed as being barred by limitation. It is averred that the service conditions of employees in CPWD are entirely different and there cannot be any comparison between the employees of two departments i.e. MES and CPWD, for the purpose of parity in the pay scales. It is pointed out that in MES, Industrial fitment policy was notified by the Government of India vide letter dated 11.5.93 and the policy has been adopted with effect from 15.10.84 and that the pay scales of Industrial Staff of MES was determined on the basis of the recommendations of the Expert Classification Committee comprising of Senior Officers of the Ministry, Members of Federation/Union and association of various categories, appointed by the Government in terms of the recommendations of the 3rd Pay Commission. It is averred that the employees working in different department cannot claim parity in the matter of pay scales. It has been prayed that the O.A be dismissed.



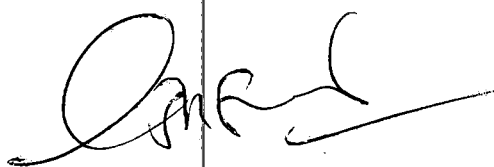
4. In the rejoinder, the applicants have reiterated the facts stated in the O.A.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. The learned counsel for the applicants contended that there is no difference in the educational qualification required for the employees working in MES and CPWD and hence there cannot be a valid justification for different scales of pay. He pointed out that in the matter of pay scale of Draftsman, the Principal Bench has accepted the claim. He has cited some judgements in which the Hon'ble Supreme Court has observed that equal pay should be given for equal work.

7. On the other hand, the learned counsel for the respondents contended that Tribunal cannot be justified in deciding as to in which scale of pay the employees should be paid their salary. It was canvassed that this is a policy matter and it should be left it to the Government which acts on the basis of recommendations of Expert Body like Pay Commission. It was urged that where the employees work in different departments i.e. where the employer is not the same, the principle "equal pay for equal work" is not applicable.

8. We have considered the rival contentions.



9. It has to be accepted that it has been the consistent view of the Supreme Court that Court/Tribunal should not interfere in the matter of pay scales fixed by the Government.

In the case of State of Haryana and another vs. Haryana Civil Secretariat Personal Staff Association (2002 SCC L&S 822), it was observed that the claim of "equal pay for equal work" is not a fundamental right of employee although it is a Constitutional goal to be achieved by the Government. It was further observed that fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. The relevant observations at para 10 of the report are reproduced hereunder:

" It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of posts under the prevailing policies of the State Government is also relevant factor for consideration by the State Government. In the context of the complex nature of issues involved, the far reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot any proceeding



against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter.

Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same.

(emphasis supplied.

In the judgement, the observations of the Supreme Court in the case of Secretary, Finance Department and others vs. West Bengal Registration Service Association and others (1993-SCC (L&S) 157), were reiterated. The relevant observations appearing at para No. 12 of the report are re-produced hereunder:

" 12. We do not consider it necessary to traverse the case ^{law} on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake some times on account of want of relevant data and scales for evaluating performances of different groups of employees..... "

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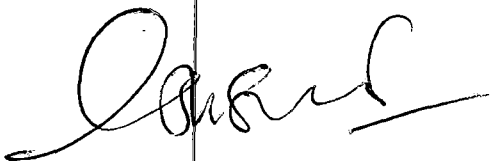
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There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice. ".

(emphasis supplied)

In the case of Union of India and others

and others vs. Makhan Chandra Roy (1998 SCC (L&S) 104)^{the}
^{Supreme Court} the deprecated the interference by the Administrative Tribunal in determining the pay scales. It was observed that what pay scale should be given to a particular employee is within the domain of the authorities and the Tribunal should not venture in the "forbidden field. "

In the case of Union of India and another vs.

P.V. Hariharan and another (1997 SC C (L&S) 838)

also it was observed that unless a clear cut case of hostile discrimination is made out, there should not be judicial interference with the pay scales fixed by the Government on the recommendation of Pay Commission. In that case their Lordships passed severe strictures against the Tribunal which had passed the order on the question of pay scales. It was observed at para 5 of the report as under:

" 5. Before parting with this appeal, we feel

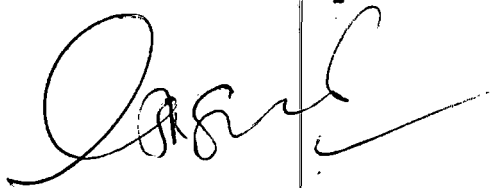
impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading

effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e. matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member. The Chairman of the Central Administrative Tribunal and the Chairmen of the State Administrative Tribunals shall consider issuing appropriate instructions in the matter.

Copies of this Order shall be communicated to the Hon'ble Chairman, Central Administrative Tribunal and to all the Hon'ble Chairmen of the State Administrative Tribunals for bringing this order to the notice of all the learned Vice-Chairmen and Member."

Similar observations were made by the Apex Court in the case of State of U.P. and others vs. J.P. Chaurasia and others (1989 SCC (L&S) 71).

10. True it is, in some other cases, the Supreme Court has passed orders or has approved the orders passed by the High Courts/Tribunals on the pay scales. However, it is noticed that the fact situation in those cases was very different.

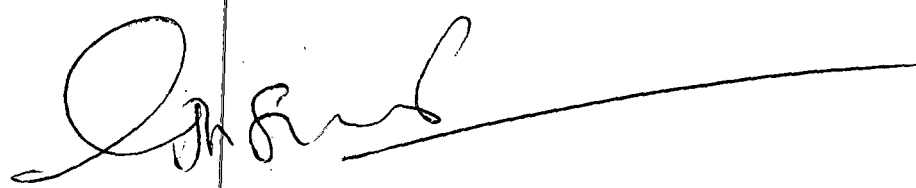


In the case of Alvaro Noronha Ferriera and another vs. Union of India and others (1999 4 SCC 408)

the fact situation was that the employer was common to both categories of judicial officers working at Goa and Delhi Union Territories, and the parity between the pay scales of judicial officers in Goa and Delhi Union Territory was disturbed for the first time when the judicial officers working in Delhi were given the higher pay scales but this benefit was not given to the judicial officers working in Goa. In that peculiar fact situation, their Lordships allowed the claim of the judicial officers working in the Goa Union Territory.

In the case of State of U.P. and others. vs. Pratap Narain Chaddha and others (2001 9 SCC 310)

the fact situation was that a particular pay scale had been given to the Diploma Holders in Printing and other allied subjects working as Lecturers but the benefit of the pay scale was withdrawn vide notification issued in the year 1993. It was noticed that the benefit of higher pay scale was given to the Diploma Holder Lecturers after they had put in 13 years service and that was based on the report of the Pay Commission. It is in those circumstances, the withdrawal of higher pay scale granted by the Government was held to be arbitrary.

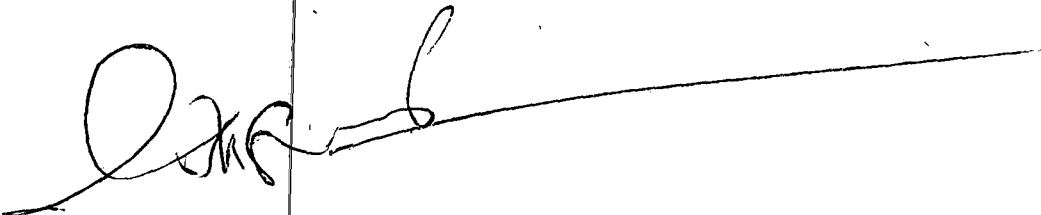


In the case of Chandigarh Administration
and others vs. Raini Vali (Mrs.) and others

(2000 (2) SCC 42), the claim of the teachers for the particular pay scale was rejected by the Chandigarh Administration on the ground that it had already informed the Management while permitting the start of 11th and 12th Classes that no more grant-in-aid would be provided for the additional staff and that there was shortage of funds with the Government. Observing that imparting of primary and secondary education to students is the bounden duty of the State Administration, as it is a Constitutional mandate that State shall ensure proper education to the students on whom the future of the society depends, and that the standard of teaching cannot be allowed to suffer on account of paucity of funds, the claim of the teachers for "equal pay for equal work" was accepted.

The other case relied on by the learned counsel for the applicant i.e. Surinder Singh and another vs. Engineer-in-Chief C.P.W.D. and others (1986 (1) SCC 369) was in respect of a daily wager working in the CPWD.

11. It is evident from the decisions of the Supreme Court that unless a clear cut case of discrimination is made out, the Court is not justified to interfere in the matter of pay scales. So also, the parity of pay scale can be claimed where the employer is the same. Keeping in view the aforesaid decisions, we cannot be



justified in issuing direction on the pay scales.

12. As to the decision of the Principal Bench of this Tribunal decided on 12.8.91 in the case of All India MES Civilian Draughtsman Association and others vs. Union of India and others (O.A. No. 1929/88) it may be stated that the employer was directed to grant the revised pay scale of Rs.425-700 to the Draughtsman Gr.I on the basis of an earlier judgement of the Calcutta Bench of this Tribunal in Satyendra Narayan Sinha and others vs. Union of India and others (O.A. No.111/89 decided on 10.11.89).

13. Keeping in view the latest decisions of the Supreme Court cited above, we cannot be justified to venture into the field of pay scales, even though it is informed that the respondents had implemented the decisions of the Calcutta Bench and Principal Bench of this Tribunal in the cases cited supra.

14. It may also be pointed out that the case for the respondents in the instant O.A is that the pay and allowances of the applicants have been fixed on the basis of MES Industrial fitment policy as notified by the Government of India, Ministry of Defence, letter dated 11.4.93, which provides for promotion in specific trades from unskilled to skilled Gr.I. It is averred that the pay scales of Industrial staffs of MES has been determined on the basis of the recommendations of the




Expert Classification Committee appointed by the Government of India on the basis of the recommendations of the 3rd Pay Commission. The Expert Classification Committee consisted of senior officers of the Ministry and members of Federation of the employees and various Union of different categories. This fact has not been disputed by the applicants.

Keeping in view that the pay scales of the applicants, who are the members of the industrial staff of MES, have been determined on the basis of the report of the Expert Classification Committee, there cannot be justification of interfering in the matter of pay scale on the ground that pay scales of the same category of employees is different in CPWD.

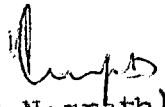
15. As to the averments that there are no promotional avenues for the applicants, it is stated in the reply that promotion avenues are available to MES employees on passing the trade test and also ACP scheme has been introduced. The employees who do not get promotion are entitled to the upgradation of pay to the next scale in the cadre on completion of 12 years service and for second upgradation after 24 years of service. Therefore it cannot be said that there are no promotional avenues to the applicants.

16. As a result of the above discussion, we hold that no directions can be given to the respondents for the grant of pay scales to the applicants at par with the

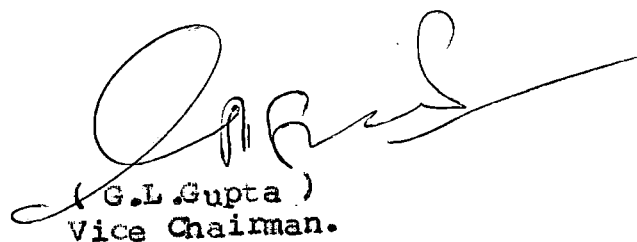


employees working in CPWD even though the designation of the posts is the same in both the establishments i.e. MES and CPWD.

17. For the reasons stated above, we find no merit in this O.A and dismiss it. No order as to costs.


(A.P. Nagrath)

Administrative Member


(G.L. Gupta)
Vice Chairman.

jsv.