

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 524 of 2002

(Bolapur) this the 8th day of July 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mehan, Judicial Member

1. V.K. Dubey,
S/o Shri K.P. Dubey,
Aged about 40 years,
Store Keeper
APS/PL-i Section,
Vehicle Factory,
Jabalpur, M.P.
and 55 Others.

APPLICANTS

(By Advocate - Shri Rehit Arya)

VERSUS

1. Union of India,
Through the Secretary,
Department of Defence,
Production, Govt of India
New Delhi.
2. The Chairman & DGDF,
Ordnance Factory Board,
10-A, S.K. Bose Road,
Kolkata - 700 001.
3. The Sr. General Manager,
Vehicle Factory
Jabalpur, M.P.

RESPONDENTS

(By Advocate - Shri P. Shankaran on behalf of Shri B. da. Silva)

ORDER

By M.P. Singh, Vice Chairman -

By filing this OA, the applicants have sought the following main reliefs :-

"(ii) to quash the impugned order dated 30.8.2001 (Annexure-A-7) passed by the respondent No.1 by a writ in the nature of certiorari.

(iii) to quash the impugned award dated 25.8.1994 (Annexure-A-1) by a writ in the nature of certiorari.

(iv) to issue a writ in the nature of command or any other appropriate writ, order or direction to fix the applicants' pay in the pay scale of Rs. 425-700 (pre-revised) with effect from 01.01.1973 with arrears and accrued interests there-upon in the interest of justice".



2. The brief facts of the case are that the applicants, 56 in number, are working as Store Keeper under respondent no.3, Vehicle Factory, Jabalpur. Earlier, 'Defence Factories, All India (Assistant) Store Keeper's Association' had filed C.A. No. 112 of 1986 before this Tribunal, and the Tribunal vide its judgment dated 18.12.1989 (Annexure-A-3) directed the respondents to constitute High Powered Committee to look into the grievance of the applicants therein. The said judgment dated 18.12.1989 was challenged before the Hon'ble Supreme Court in Civil Appeals Nos. 5613 & 5614 of 1990 and their Lordships vide order dated 8.4.1993 (Annexure-A-4) had disposed of the said Civil Appeals with the observations that "it is open to the parties to place the entire material, their respective stand before the Board of Arbitration to go into question and decide whether the Store Keepers in the Ordnance Factories are entitled to the parity of pay scales of the store keepers in the Railway establishment". According to the applicants the Board of Arbitration has not at all considered the contentions raised by the applicants, and passed the Award on 25.8.1994 (Annexure-A-1) in C.A. Reference No. 1 of 1994 as under-

"The demand raised by the Assistant Store Keepers (now designated as Store Keepers) of the Ordnance Factories to the effect that their scale of pay be fixed at Rs.425-700 (pre-revised) with effect from 1.1.73 is accepted to the extent that the store-keepers with 15 years satisfactory service in the grade of Rs.260-400 (pre-revised) be placed in the grade of Rs.330-560 (pre-revised) in the available vacancies subject to their being otherwise found suitable for the job.

This award shall be effective from 8.4.93 i.e. the date on which the Hon'ble Supreme Court referred the matter for adjudication to the Board of Arbitration".

Thereafter, and C.A. No. 8 in Civil Appeal Nos. 5614/1990 was filed by the said Association, before the Hon'ble Supreme Court and their Lordships vide order dated 6.3.1995 have

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passed the following order (Annexure-A-8)-

"Pursuant to the directions given by this Court the Board has been constituted. Parties appeared before the Board and the Board has submitted its award as indicated in our order dated 6.5.94, which is accordingly noted.

The learned counsel for the appellants sought to canvass the correctness of the award. We cannot go into the question since the proceedings have already been closed by this Court. It may be taken that we have not expressed any opinion on merits of the award. If the appellants are so aggrieved it may be open to them to take appropriate proceedings according to law. I.A.No.8 is dismissed accordingly".

Accordingly, the Association had filed an O.A.No.234 of 1995 before this Tribunal on various grounds, which was disposed of vide order dated 9.5.2000 (Annexure-A-5) in the following terms -

"6.....we direct the respondent no.1 to take a decision in the matter taking into account the petition which the applicants may file if they so choose, within one month from today, by speed post, to avoid delay. The respondent no.1 shall take decision within eight months from today and the said decision shall be promptly communicated to the applicants".

The learned counsel for the applicants has contended that in terms of the aforesaid order of the Tribunal, the respondents ought to have considered the issues raised by the applicants' association against the award dated 25.8.1994. But that was not done, and a cryptic order was passed on 30.8.2001 (Annexure-A-7) to the following effect-

"The demand raised by Assistant Store Keepers (now designated as Store-Keepers) of the Ordnance Factories to the effect that their scale of pay be fixed at Rs.425-700 (pre-revised) w.e.f.1.1.1973 is acceptable to the extent that the store-keepers with 15 years satisfactory service in the grade of Rs.260-400 (pre_revised) be placed in the grade of Rs.330-560 (pre-revised) in the available vacancies subject to their being found otherwise suitable for the job".

Aggrieved by the aforesaid order, the applicants have filed this OA, claiming the aforementioned reliefs.

3. The respondents in their reply have stated that the instant OA has been filed against the award passed by the Board of Arbitration dated 25.8.1994, and also against

the order dated 30.8.2001 accepting the award and carrying out its implementation. According to the respondents, the challenge made to the order of the respondent no.1 and the arbitration award relates primarily to the merits of the award arrived at with the aid and assistance ~~and the~~ considered opinions of the experts on the issue, and after thoroughly examining details like qualification, mode of recruitment, nature of duties, service structure, grade structure etc. Such challenge is not sustainable in view of the well-settled legal position laid down by the Hon'ble Supreme Court. The respondents have further stated that in view of the mandatory nature of the Arbitration Award, as envisaged in the said scheme, the said Award dated 25.8.1994 cannot be challenged in any proceedings including the proceedings before this Tribunal. Clause 21 of the scheme excludes jurisdiction of any authority other than the Parliament on the recommendations of the Arbitration Award. Hence the Tribunal should not entertain the present Original Application in which the Arbitration Award has been challenged and dismiss the same *ab initio*. They have further stated that the above referred Board of Arbitration was constituted by the Ministry of Labour in compliance with the order dated 8.4.1993 passed by the Hon'ble Supreme Court in Civil Appeals Nos.5613 & 5614 of 1990. Since the Board of Arbitration, as formed and its proceedings conducted on the basis of the directives of the Hon'ble Supreme Court, the resultant Arbitration Award dated 25.8.1994 submitted by the said Board of Arbitration, cannot be challenged/contested before any other Court/Tribunal. Thus, on this count also, the Tribunal cannot have any jurisdiction in the matter and hence this OA should be dismissed.

4. Heard the learned counsel of both the sides.

5. The learned counsel for the applicants has stated that the applicants have been agitating their cause for getting parity in the pay scale with the Store Keepers

working in the Railways. The Board of Arbitration has awarded some pay scale from 1.1.1973 but after completing 15 years of service. He has stated that even the scheme of Assured Career Progression, introduced by the Govt. of India in 1999 provides one promotion after putting in 12 years of service whereas in the case of Store Keepers in Ordnance Factories, they will be eligible for grant of the scale of Rs.330-560/- (pre-revised) after putting in 15 years of service, which is quite arbitrary. He has, therefore, submitted that the order dated 30.8.2001 (Annexure-A-7) passed by the respondents in pursuance to the direction of the Tribunal be quashed and set aside.

6. On the other hand the learned counsel for the respondents has stated that the Board of Arbitration was appointed in pursuance of the directions of the Hon'ble Supreme Court. The Board of Arbitration was constituted with the consent of both the parties and the Board of Arbitration has given its Award which has been accepted by the Government in toto and also implemented. Therefore, the applicant-association at this stage cannot come and agitate the action of the respondents.

7. We have given careful consideration to the arguments advanced on behalf of both the sides. We find that the applicants have filed this OA claiming the parity of pay with the store keepers working in the Railways. They had earlier filed OA No.112 of 1986 which was decided by the Tribunal vide order dated 18.12.1989. Against the said order Civil Appeals No. 5613 & 5614/1990 were filed which were decided by the Hon'ble Supreme Court vide order dated 8.4.1993. In pursuance of the direction of the Hon'ble Supreme Court, a Board of Arbitration was constituted. The Board of Arbitration has given its report. After the Award has been given by the Board of Arbitration, the employees had again gone to the Hon'ble Supreme Court in IA No.8 in Civil Appeals No.5614/1990 which was decided by the Hon'ble



Supreme Court vide order dated 6.3.1995 in terms of the order reproduced in para 2 above. Thereafter, the Association filed OA No.234/1995 which has also been decided on 9.5.2000. In pursuance of the direction of the Tribunal, the respondents have passed the Award of Board of Arbitration vide order dated 30.8.2001. The applicants have now challenged this order.

8. We find that the applicants have been agitating the matter relating to their upgradation of scale from Rs.260-400 to Rs.425-700 and to get parity of pay scale with the store keepers working in the Railways, since 1986 by filing OA No.112/1986. The matter has travelled upto the Hon'ble Supreme Court. In pursuance of the direction Hon'ble Supreme Court a of the Board of Arbitration, was constituted. The Award has been given. Thereafter, the pay scales have been considered by the 5th CPC which has also given its report and recommendations and the recommendations have also been implemented from 1.1.1996. The applicants have also taken up the matter with the Hon'ble Supreme Court about the correctness of the Award of Board of Arbitration. Now, the recommendations of the Board of Arbitration have also been implemented. Once the matter has been settled by constitution of the Board of Arbitration, it is not for this Tribunal to fix the scale of pay to the applicants. The Hon'ble Supreme Court in the case of State of Haryana and another Vs. Tilak Raj and others, 2003 SCC(L&S) 828 has held as under-

"6. The principle of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations, or even in the same organization.

7. In State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121= 1988 SCC(L&S) 673 it was pointed out that the principle of "equal pay for equal work" has no mechanical application in every case of similar work. In Harbans Lal v. State of H.P., 1990 SCC(L&S) 71 it was held that a mere nomenclature designating a person as a carpenter or a craftsman was not enough to come to a conclusion that he was doing the work as another carpenter in regular service. A comparison cannot be made with counterparts in other establishments with different managements or even in the establishments in different locations though owned by the same management. The

quality of work which is produced may be different even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of Equal pay for equal work requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job requires may differ from job to job. It must be left to be evaluated and determined by an expert body. Same was the view expressed in Ghaziabad Development Authority v. Vikram Chaudhary, (1995) 5 SCC 210=1995 SCC(L&S)1226.

In the case of Union of India Vs. P.V. Hariharan, (1997) 3 SCC 568 the Hon'ble Supreme Court has observed that the courts or Tribunals ought not to interfere with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. Change of pay scale of a category has a cascading effect, when several other categories similarly situated would put forward their claims on the basis of such change, which will lead to serious problems. Unless it can be clearly brought out that they were carrying on identical work and there is a clear case of hostile discrimination, there would be no justification for interference with the fixation of pay scales. In Union of India Vs. Makhan Chandra Roy, (1997) 11 SCC 182 it has been held by their lordships that equation of post or pay must be left to the executive government and must be determined by expert bodies like the Pay Commission. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

9. Thus, in view of the settled position of law that the matter of equation of posts is purely an administrative function and such matter should be left to the Government concerned, any revision of pay of the applicants would be an exercise which is totally unauthorised and would amount to taking a policy decision which is within the domain of the Executive authorities themselves. ~~which is purely an administrative function~~ Thus, we refrain ourselves from issuing any direction with reference to the parity of the pay scale of the applicants with those of Store Keepers in the Railways.

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10. Before we may part, we may observe that on the recommendations of the 5th CPC the Government has introduced the Assured Career Progression Scheme for the Central Government Civilian Employees vide their Notification No. 35034/1/97-Estt(D) dated 9.8.1999 to remove stagnation. As per the said scheme two promotions one after 12 years and another after 24 years of service are granted. In the light of this scheme, the applicants may approach the authorities for considering their grievances by filing representations. If such representations are filed, within one month from the date of receipt of a copy of this order, the respondents are directed to consider the representation of the applicants sympathetically within a period of six months from the date of receipt of the representations by passing a speaking reasoned and detailed order.

11. In the result, the OA is dismissed with the aforesaid direction. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

rkv.

प्रृष्ठांकन सं ओ/न्या..... जबलपुर, दि.....
पुस्तिलिखि अवो धितः—
(1) राधिका, उच्च न्यायालय बार एसोसिएशन, जबलपुर
(2) आवेद्या वी/लीजनी/कु..... के कानूनी
(3) फृद्यारी वी/लीजनी/कु..... के कानूनी
(4) वंशपति, राधिका, जबलपुर उपायोगी
सूचना एवं आवश्यक कार्यवाही देतु

R. Anuj
P. Mukherjee
B. J. Bhandarkar
14.7.04

Issued
on 15.7.04
by [Signature]