

**Central Administrative Tribunal
Principal Bench**

OA No.383/2012

New Delhi, this the 27th day of April, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Sudhir Kumar, Member (A)**

1. Indian Railway Radiographers Association
through its General Secretary
Shri Pradeep Sharma S/o P. N. Sharma,
R/o C-2B, Railway Colony, Vasant Lane,
New Delhi.
2. Arvind Kumar S/o P. P. Kulsheshtra,
Treasurer,
R/o 19/21, Railway Colony,
Kishan Ganj, Delhi-110007. Applicants

(By Advocate: Shri Amit Anand)

Versus

1. Union of India through
Secretary, Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
Northern Railway,
Baroda House, New Delhi.
3. Member Staff, Railway Board,
Rail Bhawan, New Delhi. Respondents

(By Advocate : Shri Shailendra Tiwary)

O R D E R

Justice Permod Kohli, Chairman :

Present OA has been preferred by the Indian Railway Radiographers Association through its General Secretary Pradeep Sharma and another, seeking parity in the pay scale of Radiographers working in Railways vis-

à-vis their counterparts in other departments of the Union of India, and for removal of anomaly.

2. This is second round of litigation. Earlier OA No.3059/2011 filed by the applicants seeking the same relief was disposed of vide order dated 25.08.2011 granting liberty to the applicants to file exhaustive and comprehensive representation before the appropriate authorities regarding their grievances, and the authorities were asked to decide the claim of the applicants by passing a reasoned and speaking order. Consequent upon the said directions, the applicants filed a representation, which has been rejected vide the impugned speaking order dated 25.10.2011 (Annexure A-1). The applicant association has accordingly filed this second OA seeking quashment of the impugned speaking order with further direction for removal of pay anomaly of Radiographers appointed in various other departments under the Union of India and Railways, and for grant of same pay scale, i.e., Rs.9300-34800 + Grade Pay Rs.4200/- to Radiographers and Rs.9300-34800 + Grade Pay Rs.4600/- to Senior Radiographers working in Railways at par and equal to the pay scale allowed to Radiographers working in other departments of the Union of India. As a matter of fact, the applicants have invoked the doctrine of equal-pay-for-equal-work.

3. Members of the applicant association are working as Radiographers in the Railways. While referring to the service history, it is stated that there has been an anomaly and unfair treatment meted out to the Radiographers working in the Railways from the Fourth Central Pay Commission itself when Radiographers in the Railways were placed in the

lower pay scale, and those in other departments, in higher pay scale. There was a four-tier system of the cadre of Radiographers in the Railways. It is alleged that the anomaly and discrimination continued even in the Sixth Central Pay Commission. It is further stated that Radiographers Grade-III with pre-revised pay scale of Rs.975-1540 and Radiographers Grade-II with pay scale of Rs.1350-2200 were simultaneously recruited with same qualifications, due to which the incumbent recruited in Grade-II with the same qualification even on a later date than an incumbent recruited in Grade-III, are placed in higher pay scale. Under the Fifth CPC, the pay scale for Radiographers in Railways was recommended as Rs.4000-6000, whereas their counterparts in other organizations were placed in the scale of Rs.5000-8000, even though the qualification for recruitment in the Railways was 10+2 with two years' diploma in radiography/X-ray, and for other departments of the Union of India the qualification remained matriculation with two years' diploma in radiography. The applicants have referred to the observations of the Sixth Central Pay Commission vide para 3.6.20 wherein the discrimination amongst the Radiographers in Railways and those in other departments has been noticed. The relevant observations are noticed hereunder:

“3.6.20 In Railways, the entry level of Radiographers is Rs.4000-6000 whereas in all other organisations it is Rs.4500-7000/Rs.5000-8000. The qualifications and the job profile in all the organisations is similar. In their official memorandum, Ministry of Railways have recommended parity between Radiographers inside and outside Railways. This parity is justified and the post of Radiographer in Railways should also be placed in the scale of Rs.4500-7000 corresponding to the revised pay band PB-1 of Rs.4860-20200 along with grade pay of Rs.2800 (emphasis added).”

4. It appears that despite the above observations in the Report of the Sixth Pay Commission, the anomaly persisted in the pay scales of Radiographers working in Railways and those in other departments of the Government, and the Radiographers in Railways were placed in the pay scale of Rs.4500-7000 as compared to the Radiographers in other departments who were placed in pay scale of Rs.5000-8000. The pay scale of Rs.5000-8000 was replaced by Rs.9300-34800 in PB-2 with Grade Pay Rs.4200/-. The applicants have also referred to the RTI information dated 22.07.2008 received from Lady Hardinge Medical College & Smt. S. K. Hospital, New Delhi with regard to the qualifications for recruitment of Radiographers in the pay scale of Rs.5000-8000 (Annexure A-8), whereby the following information has been supplied:

“Q.2. What is the recruitment qualification of Radiographer in the pay scale Rs.5000-8000?

Reply: The post of X-Ray Technician exists in LHMC & Smt. S.K. Hospital in the pay scale of Rs.5000-8000 and qualification for direct recruitment is as below:-

- a) Matriculation or its equivalent qualification from a recognized Board.
- b) Diploma (2 years Course) in Radiography with one-year experience or Diploma Certificate (One year's Course) with two years experience.”

Similar information has been obtained from various other institutions including the All India Institute of Medical Sciences (AIIMS), New Delhi. Except AIIMS where the essential qualification is 10+2 with Science subjects and two years' diploma course in radiography, in all other institutions the qualification is matriculation with two years' diploma in

radiography for recruitment of Radiographers in the pay scale of Rs.5000-8000. The applicants vide their representation dated 27.10.2008 (Annexure A-9) brought this anomaly to the notice of Director General (RHS), Ministry of Railways. Having received no response, present Application has been filed.

5. In the counter affidavit, the only stand of the respondents is that pay fixation is the job of expert bodies like the Pay Commission, and that the pay scales of Radiographers in Railways and other departments having been recommended by the Fifth and Sixth Pay Commissions, the Government has only implemented the recommendations. It is stated that it is not within the purview of the courts to fix the pay scales of employees on the analogy of similarly situated or common nature of duties/job profile.

6. We have heard the learned counsel for parties at length. Indisputably, the nature of duties and job profile of Radiographers in all the institutions is common and same. This fact is even acknowledged by the Sixth Pay Commission in para 3.6.20 noted above. The qualification as per the recruitment rules of the Railways for Radiographers, irrespective of the categories, is 10+2 with two years' diploma in radiography, whereas qualification in all other institutions, except AIIMS, is matriculation with science subjects and two years' diploma in radiography. It is only AIIMS where the qualification prescribed for Radiographers is 10+2 with Science subjects and two years' diploma in radiography. The respondents have nowhere disputed in their counter affidavit that the nature of duties, the

job profile and other conditions of service of Radiographers working in Railways, and those working in other institutions are identical and common and are distinct or different in any manner. The job profile of Radiographers working in Railways and in other departments being same, the question arises whether the pay fixing authorities, including the Pay Commission, can fix different pay scales for the same class of employees, merely on account of their recruitment/appointment in different departments of the Government. The answer would be 'No'.

7. Before we deal with the question of entitlement of the members of the applicant association for pay parity on the doctrine of equal-pay-for-equal-work or equality before law, we have noticed that the job of X-ray technicians is highly sensitive and technical one. Their job is also governed by the Atomic Energy Act, 1962, wherein the minimum qualification prior to obtaining the two years' diploma in radiography is possession of Senior Secondary (10+2) educational qualification, which is mandatory under the aforesaid Act. Clause (h) of sub-section (1) of Section 2 of the Act defines 'X-ray' to be 'radiation'. Sub-section (e) of Section 3 provides for the Government to have power of control over radioactive substances or radiation generating plants in order to prevent radiation hazards, secure public safety and safety of persons handling radioactive substances or radiation generating plants. Clause (c) of sub-section (1) of Section 17 allows the Central Government to prescribe qualifications of the persons for employment at the premises of any radiation generating plant, equipment or where any such appliances are used. Sub-section (2) of

Section 24 deals with offences and penalties for contravention of the provisions of the Act. The legal regime for regulating medical X-ray equipment in the hospitals is, therefore, governed by the following Acts, rules and subordinate legislations:

- i) Atomic Energy Act, 1962;
- ii) Atomic Energy (Radiation Protection) Rules, 2004;
- iii) Radiation Surveillance Procedure for Medical Applications of Radiation, 1989;
- iv) Atomic Energy Regulatory Board Safety Code for Medical Diagnostic X-ray Equipment and Installations.

The Code referred to at Sl. No. (iv) above summarizes and quotes in its Appendix-1, the minimum qualifications for X-ray Technologists as follows:

- “i) 10+2 or equivalent examination passed with science subjects from a recognized board, and
- ii) Radiographer’s/X-ray technologist’s course of minimum one year duration (including in field training in diagnostic radiology) passed from an institution recognized by the competent authority.”

8. The question of qualification has been considered by a coordinate Bench of this Tribunal in OA No.2816/2011 – *Lok Nayak Hospital Paramedical and Technical Employees' Union through its General Secretary and another v Government of NCT of Delhi & others*, decided on 30.07.2012, and the recruitment to the post of Radiographers with qualifications less than the prescribed qualification in the Code under the Atomic Energy Act, 1962, has been held to be impermissible in law.

9. Be that as it may, the question before us is pay parity. Undoubtedly, to prescribe and fix pay scales of Government employees is the prerogative and job of expert bodies like the Pay Commission, and within the domain of Executive. Nonetheless, it is also the duty and obligation of the accepting authority in the Government to examine various factors with the touchstone of Article 14 of the Constitution while accepting the recommendations of Pay Commission. It needs to be emphasized that the action of the Executive, even if based upon recommendations of some expert body, if found violative of the constitutional provisions, i.e., violative of Articles 14 and 16, or even contravening the doctrine of equal-pay-for-equal-work as enshrined under Article 39 (d) of the Constitution, the same is subject to judicial review.

10. From the factual background noticed by us hereinabove, we are of the considered opinion that there has been discrimination between the Radiographers working in Railways with higher qualifications, and those working in other departments of the Government with lesser qualifications. The job profile of all the Radiographers being the same and even Radiographers working in various departments of the Government, except AIIMS, having been recruited with lesser qualifications not permissible in law, the pay scales cannot be varied for Radiographers working in Railways. This fact has even been acknowledged by the Sixth Pay Commission in para 3.6.20 of its Report, quoted hereinabove. Discrimination is not disputed even in the counter reply filed on behalf of the respondents. The plea that the pay scales have been fixed on the

recommendations of the Sixth Pay Commission alone is not sufficient to meet the challenge in the present OA. The Hon'ble Supreme Court in *Union of India & others v Dineshan K.K.* [AIR 2008 SC 1026], wherein the respondents who were radio mechanics in Assam Rifles claimed parity with their counterparts in CRFP and BSF on the ground that there was no dissimilarity between the two as to academic qualifications, duties or responsibilities, and the disparity was caused because of anomaly in pre-revised and revised scales of personnel of Assam Rifles prior to recommendations of the Fourth Pay Commission, observed that the Government could not be permitted to perpetuate apparent discriminatory differentiation in the pay scales, and held such an action to be irrational and arbitrary and thus violative of Article 14 of the Constitution. Relevant paragraphs 9, 10 and 20 of the judgment read as under:

“9. The principle of ‘equal pay for equal work’ has been considered, explained and applied in a catena of decisions of this Court. The doctrine of ‘equal pay for equal work’ was originally propounded as part of the Directive Principles of the State Policy in Article 39(d) of the Constitution. In *Randhir Singh v Union of India & Ors.* [(1982) 1 SCC 618], a bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and held that this principle had to be read under Articles 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in *D.S. Nakara & Ors. v Union of India* [(1983) 1 SCC 305]. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of equal pay for equal work has assumed status of a fundamental right.

10. Initially, particularly in the early eighties, the said principle was being applied as an absolute rule but realizing its cascading effect on other cadres, in subsequent

decisions of this Court, a note of caution was sounded that the principle of equal pay for equal work had no mathematical application in every case of similar work. It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the Executive and expert bodies like the Pay Commission etc. It has been emphasized that a carefully evolved pay structure ought not to be ordinarily disturbed by the Court as it may upset the balance and cause avoidable ripples in other cadres as well. (Vide: *Secretary, Finance Department & Ors. v West Bengal Registration Service Association & Ors.* [(1993) Supp (1) SCC 153] and *State of Haryana & Anr. v Haryana Civil Secretariat Personal Staff Association* [(2002) 6 SCC 72]. Nevertheless, it will not be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the Executive, the Court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the Executive or the Legislature, as is sought to be canvassed on behalf of the appellants. Undoubtedly, when there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification of posts is *ex-facie* irrational, arbitrary or unjust, it is open to the Court to intervene.”

“20. Thus, the short question requiring our consideration is whether having admitted in their affidavit referred to hereinabove, the apparent disparity and anomaly in the pay scales of Radio Mechanics, the administrative authorities, the petitioners herein, could be permitted to perpetuate apparent discriminatory differentiation in the pay scales because of the disparity in pre-revised and revised scales of the personnel of Assam Rifles prior to the recommendations of the Fourth Pay Commission, irrespective of the identity of their powers, duties and responsibilities with other paramilitary forces. In our considered opinion, in view of the total absence of any plea on the part of the Union of India that Radio Mechanics in other paramilitary forces were performing different or more onerous duties as compared to the Radio Mechanics in Assam Rifles, the impugned decision of the Government was clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution.”

11. This Application is accordingly allowed. Impugned order dated 25.10.2011 is hereby quashed. The respondents are directed to fix the pay of the members of the applicant association in the pre-revised pay scale of Rs.5000-8000 w.e.f. 01.01.1996 in respect of those who are working prior to that, and in respect of those recruited/appointed later in point of time, from the dates of their appointment. The financial benefits shall be confined for a period of three years preceding the filing of this Application. The benefit shall be granted to the members of the applicant association in the above manner within a period of four months from the date of receipt of a copy of this order. No costs.

(Sudhir Kumar)
Member (A)

(Permod Kohli)
Chairman

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