

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-442/2014

Reserved on : 07.09.2016.

Pronounced on : 15.09.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Kailash Mamgain,
S/o Late Sh. Govind Ram,
R/o Q.No. M72/A, Meteorological Complex,
Lodhi Road, New Delhi-03.
2. Gyan Chand Bhagwat,
S/o Late Sh. Ramji Lal,
R/o WZ- 827, Sadh Nagar, Palam,
New Delhi-45.
3. Badri Nath S/o Late Sh. C.R. Kapoor,
R/o H.No. 4/59, Geeta Colony,
Delhi-31.
4. J.K. Sood,
S/o late Sh. Desh Raj Kapoor,
R/o WZ-633E, Sri Nagar, Shakur Basti,
New Delhi-110034.
5. Subhendu Roy S/o Late Sh. A.N. Roy,
R/o Q.No. M-16/A, Meteorological Complex,
Lodhi Road, New Delhi-03.
6. Tarcitius Xalxo,
S/o Late Sh. Francis Xalxo,
R/o H.No. 1709, Sector-9,
Pushp Vihar, New Delhi-17.
7. Govind Oraon,
S/o Lat Sh. K. Oraon,
R/o Qr. No. 1533, Lodhi Road Complex,

New Delhi-110003.

8. Smt. Anita Jain,
W/o Sh. Sunil Kumar Jain,
R/o 58/4, Pushp Vihar, Sector-I,
M.B. Road, Saket, New Delhi-17.

9. Sh. Rajiv Chawla,
s/o Sh. K.R. Chawla,
R/o H.No. 9582, 1st floor,
Pratap Oura, Shahdara,
Delhi-110032.

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Applicants

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through the Secretary,
Ministry of Earth Science,
Govt. of India, Prithvi Bhawan,
Lodi Road, New Delhi.

2. The Director General of Meteorology,
India Meteorological Department,
Mausam Bhawan, Lodi Road,
New Delhi.

3. The Secretary,
Ministry of Finance,
Department of Expenditure,
Govt. of India, New Delhi.

4. The Secretary,
Ministry of Personnel & Training,
2nd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi-3.

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Respondents

(through Sh. Susheel Kumar Sharma, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

The applicants are working on the posts of Assistant/Administrative Officer Gr.III in various offices of India Meteorological Department. According to them, the hierarchical structure, duties, functions and responsibilities of the posts of Assistant in the Field Units as well as in the Ministry/Headquarter are the same. Further, as per Recruitment Rules, the hierarchy cadre of Assistants is as under:-

Post	Direct	Promotion
LDC	85% through SSC	15%
UDC	50% through SSC with qualification of Graduation.	50% by promotion
Assistant		100% promotion

Prior to implementation of 6th Central Pay Commission (CPC), Assistants working in Field Units/Subordinate Offices were getting the pay scale of Rs. 5000-8000 whereas the Assistants working in the Ministry were getting the pay scale of Rs. 5500-8000. There was a demand to maintain parity between those working in the Field and those working in the Ministry. This issue was considered by the 6th CPC and their recommendations were as follows:-

“1.2.18: Parity between field offices and secretariat has been proposed as, in Commission’s view, equal emphasis has to be given to the field offices in order to ensure better delivery.

7.10.15: Assistant in the Organisation have however been sought to be equated with the Assistants of Central Secretariat.

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Insofar as the post of Assistant is concerned, the Commission has already recommended parity between similarly placed posts in field and secretariat offices. No separate recommendation is, therefore necessary.”

2. The 6th CPC also recommended merger of three pre revised pay scales, namely, Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 and replaced them by

a revised pay structure of PB-2+Grade Pay of Rs. 4200. Government of India, however, vide Office Memorandum dated 13.11.2009 decided to grant Grade Pay of Rs. 4600 to those who were in the pre revised pay scale of Rs. 6500-10500. Further, vide their O.M. dated 16.11.2009, they granted Grade Pay of Rs. 4600 to Assistants working in Central Secretariat Service (CSS), Armed Forces Headquarters Service, Indian Foreign Service-B as well as Railway Board Secretariat Service. The reason given for this action in the Memorandum was that as far as Assistants of CSS were concerned, there was an element of direct recruitment on this post through an All India Competitive Examination. This revised Grade Pay of Rs. 4600 has not been granted to Assistants working in Subordinate Offices/Field Units. The Applicants submitted several representations in this regard but did not receive any reply. Hence, they have filed this O.A. before us seeking the following relief:-

"That the Hon'ble Tribunal may graciously be pleased to pass "an order declaring to the effect that the whole action of the respondent not granting the benefit of OM dated 16.11.2009 (**Annex.A/4**) to the applicants by way of granting the upgraded grade pay of Rs.4600 w.e.f. 01.01.2006 is illegal, arbitrary and discriminatory and consequently pass an order to directing the respondents to grant the Grade Pay of Rs.4600 to the applicants w.e.f. 01.01.2006 at par with the Assistant working in Ministry Offices with all consequential benefits including the arrears of difference of pay allowances with interest."

3. The applicants have argued that the nature of duties and responsibilities of Assistants working in the Field Units were much higher than those working in the Ministry. Hence, the decision of the respondents of granting higher pay to Assistants working in the Ministry was totally illegal, arbitrary and discriminatory. This was also against the recommendations of successive Pay Commissions. The only reason given was that there was an element of direct recruitment completely ignoring the fact that even in the cadre of the applicants there was direct recruitment at UDC level. Their decision goes against a judgment of Full

Bench of this Tribunal in the case of **Raja Ram Vs. Govt. of NCT of Delhi** (OA-1167/2009) dated 07.01.2009 wherein it has been laid down that discrimination in pay scale in the same category was untenable in the eyes of law. In the case of applicants, a UDC promoted as Assistant and posted at headquarters would get Grade Pay of Rs. 4600 whereas if posted in Field Unit would get Grade Pay of Rs. 4200. It is noteworthy that those Assistants, who are working at headquarter level, are transferable at headquarter alone and are working in peaceful and urban localities whereas Assistants working in the field work in remote and risky locations and also have all India transfer liability. The applicants have also contended that their case was covered by judgment of this Tribunal in OA-402/2006 regarding Junior and Senior Translators. The applicants have relied on the judgment of Hon'ble Supreme Court in the case of **UOI & Ors. Vs. Dinesh Anand KK**, JT 2008 (Vol-I) SC 231 which is on the principle of 'equal pay for equal work'. Further, they have submitted that once the recommendations of 6th CPC were accepted by the Government then the same were binding. Moreover, acceptance of these recommendations was done at the level of the Cabinet whereas the O.M. dated 16.11.2009 has been issued at the level of Ministry of Finance. The action of the respondents was against the judgment of Hon'ble Supreme Court in the case of **State of Punjab Vs. Amar Nath Goyal**, 2005 SCC (L&S) 910 wherein it has been held that even though recommendations of Pay Commission were not binding on the Government once accepted that had to be implemented. The applicants have also relied on the judgment of Hon'ble Supreme Court in the case of **Randhir Singh Vs. UOI**, 1982(3)SCR 298 on the issue of 'equal pay for equal work'. On the same issue, they have also placed reliance on the judgment of Hon'ble Supreme Court in the case of **P. Sunita Vs. UOI**, 1986 SCC 94 as well as **State of MP & Anr. Vs. P. Bhartia & Ors.**, JT 1992 683. They have further relied on the

judgment of Hon'ble Supreme Court in the case of **Jaipal Vs. State of Haryana**, AIR 1988 SC 1505 wherein it has been laid down that the doctrine of 'equal pay for equal work' would apply on the premise of similar work but it does not mean that there should be complete identity in all respects.

4. In their reply, the respondents have submitted that the proposal of up-gradation of the pay scale of the applicants was submitted to the Administrative Ministry. However, it has been turned down on the ground that the applicants cannot be equated with the Assistants of CSS cadre. The decision has been communicated vide Memo dated 01.08.2014. They have stated that the reason for granting Grade Pay of Rs.4600 to Assistants of CSS was that there was an element of direct recruitment to the post of Assistants in that cadre and that also through All India Competitive Examination. On the other hand, Assistants in the Field Units were being appointed 100% by promotion from the feeder cadre of UDCs. Thus, the case of the applicants was not at par with Assistants of CSS cadre.

5. We have heard both sides and have perused the material placed on record. We have also gone through certain pronouncements of Hon'ble Supreme Court on the issue of 'pay parity' and 'equal pay for equal work. In the case of **Steel Authority of India Limited Vs. Dibyendu Bhattacharya**, (2011) 11 SCC 122 the Hon'ble Supreme Court in paras-20 to 22 has held as follows:-

"20. In **Harbans Lal & Ors. v. State of Himachal Pradesh & Ors.**, (1989) 4 SCC 459, this Court considered a similar issue and observed that while determining the issue of parity in pay, large number of considerations and various dimensions of the job are required to be taken up by the courts. The accuracy required by the job and the dexterity it entails may differ from job to job. It cannot be evaluated by the mere averments in the self - serving affidavits or counter affidavits of the parties. It must be left to be evaluated and determined by expert body. The Court further held as under :

"11....The discrimination complained of must be within the same establishment owned by the same management. A comparison cannot be made with counterparts in other establishments with different management, or even in establishments in different geographical locations though owned by the same master. Unless it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principle of "equal pay for equal work" cannot be enforced...."(Emphasis added)

21. In **Mewa Ram Kanojia v. All India Institute of Medical Sciences and Ors.**, (1989) 2 SCC 235, this Court dealt with an issue of pay parity between Speech Therapists and Audiologists and held that merely because Speech Therapists perform similar duties and functions in other institutions, are paid higher pay-scales is no good ground to accept the petitioner's claim for equal pay. There may be difference in educational qualifications, quality and volume of work required to be performed by the hearing therapists in other institutions. The person claiming parity must sufficiently produce material before the Court to adjudicate upon such a complicated issue of factual determination. More so, if the employer is not the same, the principle of equal pay for equal work would not be applicable."

(ii) In the case of **State of West Bengal and Another Vs. West Bengal, Minimum Wages Inspectors Association and Others**, (2010) 5 SCC 225 the Hon'ble Apex Court in paras 18 and 19 has held as follows:-

"18. The principles relating to granting higher scale of pay on the basis of equal pay for equal work are well settled. The evaluation of duties and responsibilities of different posts and determination of the pay scales applicable to such posts and determination of parity in duties and responsibilities are complex executive functions, to be carried out by expert bodies. Granting parity in pay scale depends upon comparative job evaluation and equation of posts.

19. The principle "equal pay for equal work" is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment, etc. Comparison merely based on designation of posts is misconceived. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employee."

(iii) In the case of **Garhwal Jal Sansthan Karmachari Union and Another Vs. State of U.P. and Ors.**, (1997) 4 SCC 24 the Hon'ble Supreme in para-8 has held as follows:-

"8. As indicated earlier, some of the duties and functions discharged by the employees of Jal Nigam and Jal Sansthan are similar but the question is whether that by itself is a decisive factor to hold that the employees of the first appellant union are entitled for the parity of pay scales with the employees of Jal Nigam. Can the principle of equal pay for equal work be applied to the two sets of employees in different organisations who are discharging the duties and functions to some extent similar without reference to the qualitative commonality thereof? From the scheme of the Act, the duties and functions assigned to the employees of Jal Nigam and Jal Sansthan, are in many respects qualitatively different. Jal Nigam is a corporation fully controlled by the state and extending the jurisdiction all over the territory of Uttar Pradesh whereas the duties and functions of Jal Sansthans are restricted to local area and under the control of local bodies. From the material produced before us, we are constrained to say that there is qualitative difference in the duties and functions discharged by the employees of Jal Nigam and Jal Sansthan and, therefore, the claim of equal pay for equal work on the plea of discrimination under Articles 14 and 16(1) of the Constitution is without any foundation. The principle of equal pay for equal work would not be applicable where qualitative difference in functions and responsibilities is apparent. This Court in *State of Madhya Pradesh and another vs. Pramod Bhartiya and others*, 1993(1) SCC 539 had an occasion to consider the application of this principle. After careful consideration of various decisions on this subject, this Court held as under:-

"It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further as pointed out by Mukharji, J. (as he then was) in *Federation of All India Customs* and 1983(3) SCC 91, the quality of work may vary institution to institution. We cannot ignore or overlook this reality, It is not a matter of assumption but one of proof. The respondents (original petitioners) have failed to establish that their duties, responsibilities and functions are similar to those of the non-technical lecturers in Technical Colleges. They have also failed to establish

that distinction between their scales of pay and that of non-technical lecturers working in Technical Schools is either irrational and that it has no basis, or that it is vitiated by mala fides, either in law or in fact (see the approach adopted in Federation case). It must be remembered that since the plea of equal pay for equal work has to be examined with reference to Article 14, the burden is upon the petitioners to establish their right to equal pay, or the plea of discrimination, as the case may be. This burden, the original petitioners (respondents herein) have failed to discharge."

(iv) In the case of **State of Punjab and Another Vs. Surjit Singh and Others**, (2009) 9 SCC 514 the Apex Court in para-8 has held as follows:-

"8. Before us, the learned counsel urged that on analysis of the decisions rendered by this Court, the following legal positions emerge. We would deal with them in seriatim and as put forward by the learned counsel:

(1) Mode and manner of selection can be a ground of classification. In *S.C. Chandra v. State of Jharkhand* [(2007) 8 SCC 279] it has been held:

"27. Thus, in *State of Haryana v. Tilak Raj* it was held that the principle can only apply if there is complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity e.g. a daily-rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different.

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30. In *State of U.P. v. Ministerial Karamchari Sangh* the Supreme Court observed that even if persons holding the same post are performing similar work but if the mode of recruitment, qualification, promotion, etc. are different it would be sufficient for fixing different pay scale. Where the mode of recruitment, qualification and promotion are totally different in the two

categories of posts, there cannot be any application of the principle of equal pay for equal work."

In a given case, mode of selection may be considered as one of the factors which may make a difference. {See *State of Haryana v. Charanjit Singh* [(2006) 9 SCC 321 Para 15]}.

(2) Daily wagger working for a long time should be granted pay on the basis of the minimum of a pay scale. Reliance in this behalf has been placed on *Secretary, State of Karnataka & Ors. v. Uma Devi (3) & Ors.* [(2006) 4 SCC 1]. It was furthermore urged that this Court should follow the principle laid down by the Constitution Bench in *Uma Devi* as such a relief had been granted by it in respect of daily wagers of the Commercial Taxes Department. The learned counsel submitted that this Court lately, although made a distinction between a direction to regularize the employees who had been working for some time, but keeping in view the constitutional mandate contained in Article 39A of the Constitution of India directed grant of a salary on a scale of pay, particularly in cases where the conduct of the State had been found to be unreasonable, unjust and prejudiced."

(v) In the case of **State of Madhya Pradesh and Ors. Vs. Ramesh Chandra Bajpai**, (2009) 13 SCC 635 the Apex Court in para-15 has held as follows:-

"15. In our view, the approach adopted by the learned Single Judge and Division Bench is clearly erroneous. It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the

designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts."

6. After perusal of the aforesaid citations, in our opinion, the following factors would be relevant for deciding the issue of 'pay parity':-

(i) For considering 'pay parity' and granting 'equal pay for equal work' wholesome identity between two cadres has to be established.

(ii) Mode of selection may be considered as one of the factors, which will make a difference. (See **State of Haryana Vs. Charanjit Singh**, (2006) 9 SCC 321 Para 15.

(iii) Evaluation of duties and responsibilities of different posts and determination of their pay scales are complex executive functions to be carried out by Expert Bodies. They cannot be decided by self serving affidavits.

(iv) Court should generally refrain from interfering in these matters as they fall with the domain of the Executive.

7. We have proceeded to consider the arguments of both sides on the basis of the above parameters. We find that in the instant case historically also there was no parity between the applicants and Assistants of CSS cadre. This has been admitted by the applicants themselves in their O.A. where in para-4.3 they have stated that Assistants working in the Field Units were getting pay scale of Rs.5000-8000 whereas Assistants working in Ministries were getting Rs. 5500-9000 prior to implementation of 6th CPC. Further, it

has also been admitted by the applicants that as far as their cadre was concerned, Assistants were being appointed 100% by promotion from the post of UDC. In the UDC cadre also only 50% were coming through direct recruitment. On the other hand in the Memorandum dated 16.11.2009, the respondents have clearly stated that the reason for granting higher pay scale to Assistant of CSS was that there was an element of direct recruitment to that post through All India Competitive Examination. Thus, it is found that there are several differences in these cadres and the hierarchical structure is not the same. If we examine the case of the applicants in the light of pronouncements of Hon'ble Supreme Court in the citations given above, it is found that they do not meet the requirements of being granted 'equal pay for equal work' as laid down by Hon'ble Supreme Court.

7.1 Further, in our opinion, since wholesome parity has to be examined for deciding each case where 'equal pay for equal work' has been asked for, judgment given in a particular cadre cannot be automatically applied to another cadre. The applicants have placed reliance on a Co-ordinate Bench judgment of this Tribunal in OA-2206/2013 (**Narinder Singh Puria Vs. UOI & Ors.**) dated 05.12.2014. On going through this judgment, we find that this pertained to a case where the applicant was working as Accountant. The Tribunal then held that the applicant was entitled to be treated at par with

Assistants in CSS in order to maintain historical parity that existed between Accountants and Assistants. In the instant case, the facts are clearly distinguishable as the applicants are neither working as Accountants nor had historical parity with Assistants of CSS. Further, the applicants relied on the judgment of Hon'ble Supreme Court in the case of **Rajesh Kumar Gond Vs. UOI & Ors.** (SLP(C) No. 17419/2009) dated 25.07.2013. On going through this judgment, we find that this deals with Junior Translators of Central Secretariat Official Language Service (CSOLS). Obviously, this judgment cannot be of any help to the applicants.

7.2 The respondents, on the other hand, relied on the judgment of a Co-ordinate Bench of this Tribunal in OA-4254/2012 (**Harjeet Singh & Ors. Vs. UOI & Ors.**) dated 10.11.2014 wherein the claim of the applicants, who were working as Assistants in Bureau of Police Research & Development for parity with Assistants of CSS/CSSS cadre was rejected because there were differences in the manner of recruitment in the two cadres. In this judgment, reliance was also placed on the decision of the Apex Court wherein it has been held that 'equal pay for equal work' was a Constitutional goal and not a fundamental right and that while taking a decision in such matter several factors had to be taken into account, which lie in the domain of the executive.

7.3 The applicants had also argued that even though Pay Commission recommendations were not binding on the Government, once accepted, they had to be implemented. The applicants had placed reliance in this regard on the judgment of Apex Court in the case of **Amar Nath Goyal** (Supra). However, this case cannot be of much help to the applicants as they have themselves stated that the Apex Court had ruled that the Pay Commission recommendations were not binding on the Government. In the instant case, the recommendation regarding pay parity between Field Units and Secretariat has been accepted by the Government with slight modification considering the element of direct recruitment in the cadre of Assistants of CSS. In our opinion, the respondents cannot be faulted for this.

8. We are, therefore, of the opinion that this O.A. is devoid of merit. Accordingly, we dismiss the same. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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