

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. No.3124/2012

M.A. No.2630/2012

Order Reserved on:18.09.2018

Order Pronounced on:08.10.2018

**Hon'ble Mr. V. Ajay Kumar, Member (J)**  
**Hon'ble Mr. A.K. Bishnoi, Member (A)**

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-Applicants

(By Advocate: Shri S.W. Haider)

Versus

Union of India

Through:

1. The Secretary,  
Ministry of Earth Sciences,  
Mausam Bhawan, Lodi Road, New Delhi.
2. The Director General,  
India Meteorological Department,  
Mausam Bhawan, Lodi Road,  
New Delhi.

Respondents

(By Advocate: Shri Ravinder Kumar Sharma)

### **ORDER**

**By Mr. V. Ajay Kumar, Member (J)**

MA No. 2630/2013 filed under Rule 4 (5) (a) of C.A.T. (Procedure) Rules, 1987 for joining together, is allowed.

2. The applicants, 14 in number, working as Mechanical Assistants in the 2<sup>nd</sup> respondent-India Metrological Department (in short IMD), filed the OA seeking the following reliefs:-

“(a) To quash the impugned order as illegal and void ab initio;

(b) To direct the respondents to consider granting to the applicants the pay scales as are recommended by the anomaly committee constituted by the respondents themselves and to grant to the applicants all consequential benefits such as arrears of salary and allowances etc. from the date, the said amount became due; and

(c) To grant any other relief or reliefs as may be deemed fit and proper under the circumstances of the case along with the costs of the application”.

This Tribunal, after hearing both sides, by order dated 29.05.2018 dismissed the OA. However, the Hon’ble High Court of Delhi in W.P. (C ) No.3894/2016 filed by the applicants, by order dated 06.05.2016, set aside the order dated 29.05.2015 of this Tribunal passed in instant OA No.3124/2012, and the said order of the Hon’ble High Court, is as under:-

“We have heard the learned counsel appearing for the petitioners and the respondents.

2. The petitioner herein had filed O.A. No. 3124 of 2012 seeking parity and equal pay for equal work relying upon the report submitted by the

Anomaly Committee after the 5th Pay Commission report.

3. We agree and accept the finding of the Tribunal that the Anomaly Committee report which was in favour of the petitioners would not by itself justify and mandate grant of the prayers made in the O.A. The Tribunal records that the Anomaly Committee report was placed before the 6th Pay Commission, who did not upgrade the pay scales of the petitioners. The earlier pay scales were reiterated, with the petitioners" being granted replacement pay scales.

4. After some hearing, learned counsel for the petitioners submits that the matter may be remanded to the Tribunal with liberty to the petitioners to amend the O.A. and place on record relevant documents to support the petitioners" claim for parity with Administrative Assistants and Scientific Assistants in the India Meteorological Department who have been granted Grade Pay of Rs.4200/- in PB-II. He agrees that the petitioners/applicants have to plead and show equivalence in the form of recruitment process, educational qualifications and other eligibility requirements, nature of duties and responsibilities, etc. It is urged some such documents have been filed with this writ petition. It is also submitted that the grade pay of the petitioner has not been correctly fixed in terms of the 6th Pay Commission Report.

5. Learned counsel for the petitioners has submitted that the petitioners possibly did not rely on these documents as they were relying primarily on the Anomaly Committee report. It is apparent that the lapse and failure in the present case is on account of the failure to understand the requirements of law. The petitioner state that they were not properly guided. They should be given one opportunity.

6. In view of the aforesaid position set out by the petitioners, we set aside the impugned order of the Tribunal dated 29.05.2015 and give liberty to the petitioners to amend the aforesaid O.A. and place on record the relevant material to justify and support their claim for parity and equal pay for equal work.

7. To cut short the delay, the parties are directed to appear before the Tribunal on 26.05.2016, when a date of hearing will be fixed”.

3. In pursuance of the said orders, the applicants finally got the OA amended and also filed certain additional documents.

4. Heard Shri S.W. Haider, learned counsel for the applicants and Shri Ravinder Kumar Sharma, learned counsel for the respondents and perused the pleadings on record.

5. To a specific query, Shri S.W. Haider, the learned counsel appearing for the applicants admitted that though the OA got amended by way of adding certain grounds and enclosing certain documents, but there is no change in the relief claimed.

6. The learned counsel for the applicants submits that the applicants, who were working as Mechanical Assistants in IMD, are seeking pay parity with Administrative Assistants and Scientific Assistants of the same department who have been granted Grade Pay of Rs.4200/- in PB-2.

7. In **Secretary, Department of Personnel, Public Grievances and Pension & Another Vs. T.V.L. N.**

**Mallikarjun Rao, 2014 (13) SCALE 664**, the Hon'ble Apex Court while reiterating that "the principle of equal pay for equal work" is not always applicable even if duties and functions are of similar nature, set aside various orders passed by different Benches of this Tribunal and of the Hon'ble High Courts in respect of Data Entry Operators Grade 'A' in different departments. The relevant paragraphs of the said judgment read as under:-

"30. In *Mewa Ram Kanojia v. All India Institute of Medical Sciences and others*, (1989) 2 SCC 235 this Court has inter alia held as follows:-

"5. While considering the question of application of principle of "Equal pay for equal work" it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequal cannot claim equality.

\* \* \*

7. Even assuming that the petitioner performs similar duties and functions as those performed by an Audiologist, it is not sufficient to uphold his claim for equal pay. As already observed, in judging the equality of work for the purposes of equal pay, regard must be had not only to the duties and functions but also to the educational qualifications, qualitative difference and the measures of responsibility prescribed for the

respective posts. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of "Equal pay for equal work" would not apply....."

31. It was further re-affirmed in a three-Judge Bench judgment of this Court in *Shyam Babu Verma & Others v. Union of India & Others*, (1994) 2 SCC 521 wherein the Court held:

"9.....The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of 'equal pay for equal work' should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them. The principle of 'equal pay for equal work' has been examined in *State of M.P. v. Pramod Bhartiya* by this Court. Before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary. Then only it can be held that there has been a discrimination, within the meaning of Article 14 of the Constitution."

32. In fact the case of *Shyam Babu Verma* was similar to the present case. In the said case the Third Pay Commission placed Pharmacists Grade-B into two categories and prescribing two scale of pay – (i) For fully qualified pharmacist who possess the qualification mentioned under the Act and (ii) For unqualified Pharmacists, those covered by clause (d) of Section 31 of the Act. The said recommendation was given effect from 1.1.1973. In the said case it was urged on behalf of the petitioners that based on the principle of equal pay for equal work they were entitled to the pay scale of Rs.330-550 which was the scale of pay to the other Pharmacists. In

the said case after making the above said observation this Court further held:

"10. In the facts of present case there is no scope for applying the principle of 'equal pay for equal work' when the petitioners belong to a separate category of Pharmacists with reference to the qualifications prescribed under the Act. According to us, there is no element of arbitrariness in the decision of the respondents to implement two scales of pay for two categories of Pharmacists Grade-B. It does not violate any of the provisions of the Constitution calling for interference by this Court.

11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to [pic]the fault of the respondents, the petitioners being in no way responsible for the same."

8. A large number of factors, namely, educational qualifications, nature of duty, nature of responsibility, nature of method of recruitment etc., are relevant for determining equivalence in the matter of fixation of pay scale (See Secretary, Finance Department Vs. West Bengal Registration Service MANU/SC/0226/1992; State of U.P. Vs. Chaurasia MANU/SC/0502/1988; Union of

India Vs. Pradip Kumar Dey (2000) 8 SCC 580; State of Haryana Vs. Haryana Civil Secretariat Personal Staff Association MANU/SC/0576/2002).

9. The learned counsel for the applicants submits that the pay scales of the post of Mechanical Assistants were all the same in different departments up to the stage of 4<sup>th</sup> CPC. The anomaly arose after the 5<sup>th</sup> CPC recommendations were available, wherein even though other similar posts of Mechanical Assistants were placed in the revised scale of Rs.5500-9000, the posts of Mechanical Assistants in IMD were placed in the lower scale of Rs.4500-7000 with effect from 01.01.1996. The learned counsel further submits that though Anomaly Committee constituted to settle the anomalies arising out of the implementation of the 5<sup>th</sup> Pay Commission recommendations, as per its Minutes dated 11.07.2005 recommended the pay scale of Rs.5500-9000 for the Mechanical Assistants in the IMD, the respondents have not given effect to. He further submits that, even subsequently the respondents themselves requested the Ministry of Earth Sciences for granting of upgraded pay

scales to various Mechanical cadres in IMD, as per the ad hoc Anomaly Committee Report dated 11.07.2005.

10. On the other hand, Shri Ravinder Kumar Sharma, the learned counsel for the respondents submits that the OA itself is barred by the period of limitation since the applicants are seeking granting of a particular pay scale in respect of the 5<sup>th</sup> CPC recommendations by filing the OA in the year 2012, i.e., after 6<sup>th</sup> CPC recommendations came into force w.e.f. 01.01.2006. The 6<sup>th</sup> CPC, before submitting its recommendations, have considered the various anomalies brought to its notice by various cadres of various departments. Further, as on today, in fact, the 7<sup>th</sup> CPC recommendations have also come into effect. Even the 7<sup>th</sup> CPC recommendations while submitting its recommendations have considered the identical anomalies of various sections of employees. Accordingly, the learned counsel submits that at this stage, the claim of the applicants with regard to 5<sup>th</sup> CPC recommendations should be treated as infructuous and stale.

11. The learned counsel for the respondents further submits that once the Pay Commissions, which are the

expert bodies, after due deliberations and after considering the representations from the stake holders submitted its recommendations and which were approved by the Government, any change can be done only as per the Anomalies Committee in respect of the Pay Commission which is operating as on today. Hence, the applicants can agitate about their grievances, with regard to the 7<sup>th</sup> CPC recommendations before the Anomalies Committee in respect of the 7<sup>th</sup> CPC recommendations only. The learned counsel further submits that this Tribunal, while exercising its power of judicial review, cannot interfere with the recommendations of the expert bodies, such as Central Pay Commission.

12. In **State of West Bengal Vs. Subhash Kumar Chatterjee & Others, (2010) 11 SCC 694**, the Hon'ble Apex Court has held as under:-

“14. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the Courts

cannot compel the State to accept the recommendations of the Pay Commissions though it is an expert body.....It is no doubt, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State action or inaction while fixing the pay scale for a given post”.

13. The claim of the applicants is pertaining to 5<sup>th</sup> CPC and Anomaly Committees constituted under 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> CPCs, have already considered the claims of the applicants, and not found favour, and the subsequent CPC has also submitted its recommendations and the same were implemented. If any employee is still having any grievance with regard to any pay scale of any post, he can submit his objections/representation to the Anomaly Committee constituted in respect of the 7<sup>th</sup> CPC, which is the expert body to consider such claims.

14. In the circumstances and for the aforesaid reasons, the O.A. is disposed of by granting liberty to the applicants to submit their grievances, if any, to the Anomaly Committee constituted under the 7<sup>th</sup> CPC. We are sanguine that the said Anomaly Committee will

consider the same, in accordance with law, within a reasonable period. No costs.

**(A.K. BISHNOI)**  
**MEMBER (A)**

**(V. AJAY KUMAR)**  
**MEMBER (J)**

RKS