

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No. 937 of 2011

Reserved on: 04/10/2016

Date of order: 17/10/2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

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1. All India Federation of Customs and Central Excise Telecommunication Staff represented by Secretary General, having office at M.S. Building, 15/1, Strand Road, Kolkata-700001.
2. Sri Sanjoy Kumar Roy, son of Late Binode Chandra Roy, Secretary General of Serial No.1 Federation residing at 23/2/D/1, Dharmatala Road, Post Office Belur Math, District Howrah, PIN-711202.
3. Sri Kanchan Kumar Dutta, Son of Late Mnindra Nath Dutta, member of Serial No.1 Federation residing at Village - Rahara Paschimpara, Police Station Rahara, District North 24 Parganas.
4. Sri Shovan Ratan Pattanayak, son of Sri Satish Chandra Pattanayak, member of serial No.1 Federation residing at Qtr No.204, Type IIIB, Central Excise and Customs Quarter Himachal Bihar, Matigara, District Darjeeling.
5. Sri Dil Bahadur Dorjee, son of Late Kaziman Mohara, member of serial No.1 Federation, residing at Sukna Bazar, Post Office Sukna, District. Darjeeling.
6. Sri Toyanath Sarma, son of Late Ramchandra Sarma, member of serial 1 Federation residing at Lions Eye Hospital Road, Bhanunagar Post Office Sevak Road, Siliguri-734001.

22/10/16

7. Sri Sukha Ranjan Das, son of Late Anil Chandra Das member of serial No.1 Federation, residing at Babupara Central Customs and Excise Residential Complex, Type II B 2, Balu Jouri, Siliguri, District Darjeeling.
8. Sri Arup Dey, son of Adhir Kumar Dey, member of serial No.1 Federation, residing at Village Charaktala (Saktigarh) near Saktigarh High School, Post Office Bangaon, District North 24 Parganas.
9. Sri Swapan Pal, son of Keshab Lal Pal, member of serial No.1 Federation residing at Nazrul Islam Sarani, Post Office Udayarajpur, Madhyamgram, Kolkata-700129.
10. Sri Gurupada Das son of Sachindra Nath Das, member of serial No.1 Federation residing at Vivekananda Palli, Dutapukur, District North 24 Parganas.
11. Sri Gobinda Das son of Late Satya Ranjan Das Member of serial No.1 federation residing at Santipally, Hooghly Station Road, Post Office Bandel, District Hooghly .

Serial No.2 to 11 are working for gain as
Radio Operator, Telecommunication Wing,
Commissionerate of Customs (Preventive)
West Bengal, Kolkata.

.....Applicants

-Versus-

For the Applicants - Mr. S.Karmakar, Counsel

1. Union of India service through the Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, North Block, New Delhi-110001.
2. The Secretary to the Government of India, Ministry of Finance, Department of Expenditure, New Delhi-110001.
3. The Chairman, Central Board of Excise and Customs, North Block, New Delhi-110001.



4. The Commissioner (Logistics), Directorate of Logistics, Customs and Central Excise, 4th Floor (A Wing), Lok Nayak Bhawan, Khan Market, New Dehi-110001.
5. The Commissioner of Customs (Preventive), West Bengal, Kolkata 15/1, Strand Road, Customs House, Kolkata-700001.

.....Respondents

For the Respondents -None

ORDER

MS. JAYA DAS GUPTA, AM:

The applicants have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) Leave be granted to the applicants to file this joint application in terms of Rule 4(5)(b) of the C.A.T. (Procedure) Rules, 1987;

b) To pass an order by setting aside and/or quashing the impugned order passed by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Custom, vide F. No. A-23011/15/2010-Ad.IIA dated 6th June, 2011 as contained in Annexure A/10 to this application;

c) to pass an appropriate order directing the respondent authorities to enhance the pay scale of the Radio Operators at par with the Radio Technicians at Rs. 5000-150-8000/- with effect from the 1st day of January, 1996 and to disburse the arrear after fixation of the pay scale to the applicants as per the recommendation of the 5th Central Pay Commission;

d) to direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for effective adjudication of the issues involved herein;

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e) To pass such other or further order or orders as to this Hon'ble Tribunal may deem fit and proper."

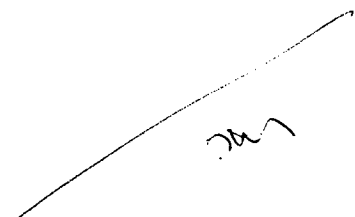
2. In this case Mr.K.K.Maity, the learned counsel represented for the Respondents. However, when the matter was listed on 26.09.2016 no one appeared for the Respondents and it was informed by the learned counsel for the applicants that Mr.Maity informed him that he is not in the panel of the Union of India now. Hence, Mr.P.N.Sharma, the learned counsel who was present in the court submitted that he is representing for the Union of India in the CAT. Hence, he was directed to take instruction in this matter and argue on the next date. It was also directed that if none is present for the respondents on the next date, this being an old case of 2011 the same shall be disposed of, as per Rule 16 of the CAT Procedure Rules, 1987 on the basis of the pleadings after hearing the learned counsel for the applicants.

3. When this matter came up for hearing on 04.10.2016, none appeared for the Respondents. Hence we proceeded to hear and decide the matter as per the provision in CAT Procedure Rules, 1987. Heard the learned counsel for the applicant and with his aid and assistance perused the records.

4. It is the case of the Applicants that Applicant No.1 is a recognized Association of Radio Operators under the Telecommunication Wing of Central Excise and Customs, Ministry of Finance, Department of Revenue, Government of India. The

Telecommunication Wing is broadly divided into two streams namely Radio Operations, responsible for operation stream and Radio Technician for the maintenance stream. It is the contention of the Applicants that the 5th CPC decided to improve the initial recruitment and pay scale of Diploma Holders in the Government and accordingly recommended the pay structure of Diploma Engineering sub ordinate cadres. According to the recommendation, the pay scale of Diploma Engineers (Rs.1400-2300/-) was revised to (Rs.5000-8000/-) by the order of the Government but the same treatment was not extended to the Radio Operators. This resulted the anomaly of pay from 01.01.1996 because the entry grade pay of maintenance stream was up graded to Rs. 5000-8000 while the same up gradation was not effected to them.

The Learned Counsel for the Applicants further submitted that pursuant to the order of the Hon'ble High Court, Madras, Government of India accorded approval for up gradation of the posts of the applicants therein and accordingly the pay scale of the applicants who were from the maintenance stream were revised w.e.f. 01.01.1996. Further grievance of the applicants that though the Commissioner, Directorate of Logistics, Customs and Central Excise, New Delhi vide letter dated 17.03.2009 recommended for revision of pay scale by way of up gradation of the pay scale of operational stream in line with the maintenance



stream in order to avoid disparity of pay among the employees, the Government did not agree on the said recommendation. The Applicants filed OA no. 890 of 2010 before this Bench of the Tribunal which was disposed of with direction to the respondents to consider and dispose of the representation and pass a reasoned order within six months from the date of receipt of a copy of the order. Ultimately, to cut short the matter, the under Secretary of the Government of India issued an order vide F.No. A-23011/15/2010-Ad.IIA dated 6h June, 2011 by which the prayer of the Applicants was rejected that is why disparity in pay among the staff of maintenance was allowed to continue. Being aggrieved by such action, the Applicants have filed the present Original Application with the aforesaid reliefs.

5. Per contra, the Respondents filed their reply in which they have refuted the stand by the applicants which would be discussed infra at the appropriate stage, here in below. Accordingly, the Respondents have prayed for the dismissal of this OA.

6. As stated above, the Telecommunication wing of the Board of Central Excise and Customs is further divided into two streams namely Operation and maintenance streams. The entry point post of Operation stream is Radio Operator and the entry point post of stream of maintenance is Radio Technician. The Learned Counsel for the Applicants drew our attention to the

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14. Mr. Santhakumar, learned counsel appearing for the Respondents has contended that since the petitioners had lost the earlier round of litigations and that in view of the clarification issued by the first Respondents vide letter dated 3.5.2006, the petitioner association may be directed to submit representations to the respondents for implementation of the said decision.

15. We are of the considered view that in view of the decision taken by the first respondent dated 3.5.2006 communicated to all Heads of Departments under CBEC, it is not necessary to direct the petitioner association to submit representations to the respondents 1 to 4. Instead, we direct the Respondents 1 to 4 to pass appropriate order based on the decision dated 3.5.2006 in respect of members of petitioner association.

16. Since the litigation is going on right from 1998, we direct the respondents 1 to 4 to pass appropriate orders in terms of the order dated 3.5.2006 issued by the first respondents within a period of 8 weeks from the date of receipt of this order from the Registry of this Court.

17. The writ petition is disposed of accordingly. In the circumstances, there will be no order as to costs."

7. In compliance of the aforesaid direction of the Hon'ble High Court of Judicature at Madras, the Government of India in the Ministry of Finance, Department of Revenue, C.B.E.C, New Delhi issued order No. A-26017/66/2008AD.II-A dated 18th February, 2009 which is set out below:

"F.No.A-26017/66/2008Ad.II-A
Government of India
Ministry of Finance
Department of Revenue
C.B.E.C.

New Delhi, the 18th February, 2009

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The Commissioner,
Dte. Of Logistics,
Customs & Central Excise,
Lok Nayak Bhavan (4th floor, 'A' Wing),
Khan Market,
New Delhi.

Subject – Revision of Pay scale of Maintenance Stream of Telecom Wing of the CBEC w.e.f. 1.1.96 – Hon'ble High Court of Madras order dated 30.4.2005 in W.P.No.12385/2004-Implementation thereon – Reg.

Sir.

I am directed to refer to your Directorates' letter F.No. 19/WP No.12385/2004/Comns/2008/8261 dated 03-12-2008 on the above subject.

2. Pursuant to the judgement and order dated the 30th of April, 2008 passed by Hon'ble High Court of Judicature at Madras in Writ Petition No. 12385 of 2004 titled 'All India Association of Customs, Central Excise and Narcotics Electronic Maintenance Engineers and another Vs. Union of India & others', the matter was processed, in consultation with Department of Expenditure, for up gradation of the scales of pay attached to different post held by the members of the petitioners Association, in terms of the aforesaid judgement. The Department of Expenditure, have accorded approval for up gradation of posts. A copy of the relevant Note of D/o Expenditure is enclosed for reference.

3. Accordingly, it has been decided to implement the judgement and revise the pay scale, as per the approval of D/o Expenditure as follows:

Post	Pre-revised Pay-scale	Existing revised pay scale (Rs)	Approved pay scale (Rs.)	Remarks
1.	2.	3.	4.	5.
Superintendent	2000-3500	6500-10500	6500-10500	-
Sr. Technical Assistant	1640-2900	5500-9000	5500-9000	Posts of Sr. Technical Assistant and Technical Assistant to be merged.
Technical Assistant	1400-2600	5000-8000		
Radio Technician (Diploma Holder)	1400-2300	4500-7000	5000-8000	-
Radio Technician (Non-Diploma Holder)	1320-2040	4000-6000	4000-6000	-

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4. The above revision would take effect from 1.1.1996 and would be subject to condition that the post of Sr. Technical Assistant and Technical Assistant would be merged.

5. Implementing the judgement and order of Hon'ble Court as stated above you are requested to kindly take necessary action with regard to fixation of pay and drawl of arrears etc. A copy of the judgement is enclosed for ready reference along with a copy of this office letter even number dated the 3rd of May, 2006 referred to in para 15 of the judgement.

6. A copy of this order may be delivered to both the petitioners in the Writ Petition. The pay fixation order pursuant to these instructions may be sent to all concerned on priotiy.

7. Further, the Dte. of Logistics is also requested to move a proposal regarding amendment of the RRs to the post of Radio Technician so as to provide that only diploma holders/equivalent would be eligible for appointment to the post and the same would be filled on direct recruitment basis only. The amendment of RRs would take effect on prospective basis.

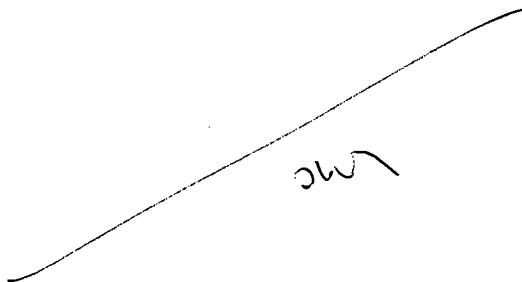
8. This issues with the concurrence of Department of Expenditure.

Yours faithfully,

(Alok Agarwal)

Under Secretary to the Govt. of India"

8. It is the allegation of the applicants in the present OA that because of the merger of the pay scale of Technical Assistant and Senior Technical Assistant to the scale of Rs. 5500-9000/-, the Operation stream of the Telecommunication Wing raised their grievance that this has created an anomaly between the operation streams and maintenance stream of CBEC which needs to be removed. Taking up their cause, the Directorate of Logistic, Customs & Central Excise, New Delhi took up the matter so that the so called anomaly between the two streams of the



Telecommunication Wing could be removed. But the Government of India did not agree to such proposal.

9. Subsequently, the All India Federation of Customs & Central Excise, Telecommunicating Staff filed OA No. 890 of 2010 before this Bench of the Tribunal which was disposed of on 17.6.2010. The full text of the order dated 17.6.2010 in OA No. 890 of 2010 is extracted herein below for ready reference:

"The applicant No.2 to 12 are working as Radio Operator under Telecommunication Wing, Commissionerate of Customs. Their grievance is that their pay scale has not been fixed at par of the Radio Technicians. Being aggrieved, they have filed this OA seeking the following main relief:

(a) To pass an appropriate order directing the respondent to enhance the scale of pay of the Radio Operators at par with the Radio Technicians at Rs. 5000-8000/- w.e.f. the 1st day of January, 1996 and/or to disburse the arrears after fixation scale of pay to the applicants as per the recommendation of the 5th Central Pay Commission;

(b) To direct the respondents to deal with and/or dispose of the representation of the applicants dated 6.10.2009.

2. The Ld. Counsel for the parties were present and heard.

3. When the matter came up today, the Ld. Counsel for the Applicants submitted they have filed a representation at Annexure-A/7 dated 6.10.2009 which has not been considered and disposed of by the respondents. The Ld. Counsel, however, submitted that they will be satisfied if a direction is given to the competent authority to consider and dispose of the representation of the applicants and pass appropriate order and communicate the same to the applicants within a time frame. The Ld. Counsel for the

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respondents submitted that if they would suffice interest of justice, he has no objection.

4. In the interest of justice, we direct that the respondent No.3 or any other competent authority shall consider and dispose of the representation of the applicants and pass appropriate order within a time frame of six months from the date of receipt of copy of this order. For that purpose, the applicants are directed to forward copy of the OA, representation, annexure and this order to the said authority forthwith. It is made clear that the speaking order may be communicated to the 2nd applicant herein after passing considered order. The OA is accordingly disposed of. No costs."

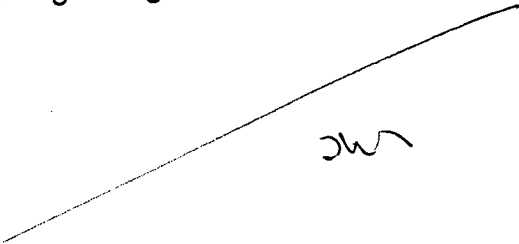
10. Accordingly, the Respondents considered the representation of the Applicants in great detail, dealing with all the points raised by the Applicants in their representation and intimated the result thereof vide speaking order No. A-23011/15/2010-AD.IIA dated 6th June, 2011 which is set out below:

"F.No.A-23011/15/2010-Ad IIA
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Ad.IIA Section

New Delhi the 6th June 2011

ORDER

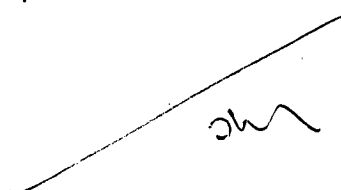
Sub:- OA No.890 of 2010 filed by the All India Federation of Customs & Central Excise Telecommunication Staff & Ors in the Kolkata Bench of the Hon'ble CAT-regarding.



The all India Federation of Customs & Central Excise Telecommunication Staff & Ors has filed an OA No.890 of 2010 before the Kolkata Bench of the Hon'ble CAT for issuance of direction to the Respondents to take necessary steps for revision of pay scale of Operation stream of Telecommunication Wing of the Central Board of Excise & Customs and the members of the Applicant' Federation at par with the Radio Technicians. The gist of prayer of the petitioners in the said OA is reproduced below:-

- a) Leave be granted to the applicants to file this joint application in terms of Rule 4(5)(b) of the CAT (Procedure) Rules, 1987;
- b) To pass an appropriate order directing the respondent authorities to enhance the scale of pay of the Radio Operators at par with the Radio Technicians at Rs. 5000-150-2000/- with effect from the 1st day of January, 1996 and/ or to disburse the arrears after fixation of scale of pay to the applicants as per the recommendation of the 5th Central Pay Commission;
- c) To direct the respondents to deal with and/ or dispose of the representation of the applicants dated 6th October 2009, being Annexure 'A-7'/herein;
- d) To direct the respondents to proceed with the entire records of the case before the Hon'ble tribunal for effective adjudication of the issues involved herein;
- e) To pass such other or further order or orders as to this Hon'ble Tribunal may deem fit and proper.

2. The Hon'ble Tribunal having heard the parties & perused the document and decided the case vide order & judgment dated 17.6.2010. In the aforesaid judgment, the Hon'ble CAT, Calcutta Bench ordered that in the interest of justice, the respondent No. 3 Chairman, Central Board of Excise & Customs or any other competent authority shall consider and



dispose of the representation of the applicants and pass appropriate order within a time frame of six months from the date of receipt of the copy of this order.

3. The representation dated 6.10.2009 of the petitioner Association annexed with the OA No.890 of 2011 and submissions made in the referred OA are for revision of scale of pay of the Radio Operators in Operations Wing on par with the Radio Technicians of Maintenance Wing. This matter has been examined in this Department in consultation with the Department of Expenditure (the nodal Department on this subject) and during the examination the following significant points have been observed:-

(i) The educational qualification of the Radio Operators in Operation wing (earlier designated as Operator (Telecomn.) effected on 1.1.1996 was Matric with Science subject and 2nd class certificate of competency in wireless issued by the Ministry of Transport & Communication or equivalent. The 5th CPC vide para 66.141 had recommended to upgrade the pay scale of the post of Radio Operators from Rs. 1320-2040 to 1400-2300 in operations and Cipher streams based on the assumption that these posts require Diploma in Engineering as essential qualifications. In spite of lower qualification, the posts of Radio Operators in Operation wing had already been allowed the higher pay scale of Rs. 4500-7000 in the light of the court's direction;

(ii) The Radio Technicians of Maintenance wing were granted the revised pay scale of Rs.5000-8000 on the basis of their educational qualification of Diploma in Radio Technology/ Telecommunication Engineering as per the recommendations of the 5th CPC. Further, the Radio Technicians (Non-diploma holders) who were in the pre-revised pay scale of Rs.1320-2040 were granted the normal replacement scale of Rs. 4000-6000/-.

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(iii) The Radio Technicians (Diploma holders) in the Maintenance wing were in pay scale of Rs. 1400-2300 as on 1.1.1996. Therefore, the Radio Technicians (Diploma holders) of Maintenance were higher than the Radio Operators of Operation wing in terms of pay scale and educational qualifications as on 1.1.1996;

(iv) The Recruitment Rules of the post of Radio Operators of Operation wing as on 1.1.1996 provide the educational qualification of Matric with Science subject and 2nd Class certificate of competency in wireless issued by the Ministry of Transport and Communication or equivalent, which has been subsequently upgraded to 10+2 with Science subject or equivalent and Diploma in Radio Technology/Electronics/Communications or equivalent or ITI certificate in Electronics/Radio with 2 years experience in the Recruitment Rules notified in the year 2000. Therefore, their educational qualification as per the Recruitment Rules existing as on 1.1.1996 was lower.

4. In the light of above observations, there is no merit in the case of petitioners.

5. NOW THEREFORE, in view of position explained in the preceding paragraphs, the competent authority has decided to reject the representation dated 6.10.2009 annexed with the OA No.890 of 2010 and submissions made in the OA regarding up-gradation of the pay scales of the post of Radio Operators in Operations Wing from Rs.1 4500-7000 to Rs.5000-8000 at par with the Radio Technicians of Maintenance Wing.

6. This issues with the concurrence of the Department of Expenditure vide their U.O. No.6/98/99-IC dated 3.2.2011.

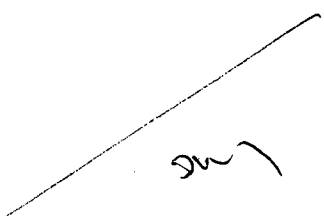
(R.K. Sharma)

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Under Secretary to the Government of India"

11. We find from the records that even in the amended Recruitment Rules, 2000, the essential educational qualification of the Radio Operator who are placed at Rs. 4500-7000/- is "(a) **10+2 with Science subject or equivalent; (b) Diploma in Radio Technology/Electronics/Communications or equivalent or ITI certificate in Electronics/Radio with 2 years experience**" whereas the essential qualification of the Radio Technicians, in the pay scale of Rs. 4500-7000/-, which is the entry point of the maintenance stream is "(a) **Diploma in Radio Technology/Electronics Communication Engineering OR equivalent OR ITI certificate in Radio/Electronics with one year experience.**" From the above it is clear that while an applicant with 10+2 Science qualification can be appointed as Radio Operator, he cannot be appointed as Radio Technician where Diploma is required.

12. The learned counsel for the Applicants further drew our attention to the office order No. A.12012/1/2000-Ad.II (PF) issued by the Government of India, Ministry of Home Affairs, Directorate of Coordination (Police Wireless), New Delhi to contend that in similar situation, the Government of India removed the pay anomaly in so far as the employees of the Police Wireless and, as such, rejection of the claim of the applicants is not just and proper. We have perused the order. We find that in pursuance of the



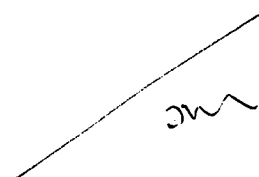
approval conveyed by the Ministry of Finance the Group B and C posts in the operational and technical wings of Directorate of Coordination of Policy Wireless were re structured by providing particular scales of pay.

We do not subscribe to the submissions made by the Learned Counsel for the Applicants. It is for the Government to decide the pay scale of the posts in various departments according to their functional responsibility and the Tribunal lacks jurisdiction to direct the Government to do so; especially the same being a policy decision of the Government. In this connection we would like to place reliance on the decision of the Hon'ble Apex Court in the case of **S.C. Chandra v. State of Jharkhand** [(2007) 8 SCC 279], relevant portion of which is extracted herein below:

"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."

13. The Hon'ble Supreme Court also took exception to the Administrative Tribunal's going into the question of fitment of officers in a particular grade or pay scales attached thereto vide its judgment in **Dy. Director General of Geological Survey of India v. R. Yadaiah**, (2001) 10 SCC 563, In paragraph No.2, it was observed as follows:

"2..... The question that arises for our consideration is whether it was appropriate on the part of the Tribunal to go into this question of upgradation of pay of a particular group of employees and give the relief with effect from a particular date. On examining the order of the Cuttack Bench of CAT, we find that the Bench did not have the opportunity of a counter-affidavit on behalf of the Union of India, and on the other hand, the prayer to file the counter-affidavit stood rejected. Ordinarily, the courts or tribunal should not go into the question of fitment of the officers in a particular group or the pay scale thereto, and leave the matter to the discretion and expertise of the special commission like the Pay Commission, unless the court finds on materials produced that there is some apparent error. (Emphasis added)"

14. In view of the facts and law enumerated above, we find no error in the impugned order requiring interference by this Tribunal. Hence this OA is held to be without any merit.

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15. Accordingly, this OA stands dismissed by leaving the parties to bear their own costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C. Gupta)
Member (Judl.)

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