

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/01488/2014

Date of order : 12.1.2016

LIBRARY

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

SUSANTA CHOWDHURY

VS

UNION OF INDIA & ORS.

For the applicant : Mr.M.K.Bandyopadhyay, counsel

For the respondents : Ms. M.Bhattacharya, counsel

O R D E R

Ms. Bidisha Banerjee, J.M.

The applicant is aggrieved in regard to a speaking order dated 20.1.14 issued by the Director of All India Institute of Hygiene and Public Health rejecting the applicant's prayer to upgrade the Grade Pay of Transport Supervisor from Rs.2400/- to Rs.4200/- on the ground that the entry qualification for the post of Transport Supervisor is Matriculation in the department whereas the Grade Pay of Rs.4200/- was available to the Graduates and in terms of recommendations of 6th CPC and the post of Transport Supervisor being not in direct hierarchy of Drivers there would be no comparison between a Transport Supervisor and a Driver.

2. The said speaking order was issued pursuant to the direction of this Tribunal to constitute an Expert Committee or to refer to an Expert Committee already constituted to deal with isolated post in order to address the grievance of the applicant since he was getting lower pay scale than the Drivers whose duty he was supposed to supervise and despite his case being strongly recommended for grant of higher scale of pay by several officers of the department including the Director of the Institute.

3. Ld. Counsel for the applicant submitted that the Expert Committee which met to consider the grievance ought to have considered the matter in terms of true spirit of the order of this Tribunal. He also submitted that

identical post holders in other Central Govt. Departments have been bestowed with higher scale of pay.

Ld. Counsel for the respondents submitted that once the Expert Committee met and considered the matter, the applicant would have no right to claim upgradation of the Grade Pay to Rs.4200/- as the entry qualification was lower than that of identically nomenclatured posts of other departments.

4. We have heard both the ld. Counsels and perused the materials on record.

5. In regard to seeking pay parity at par with identically nomenclatured posts of other departments, we noted the following decisions :

(a) In ***State of U.P. -vs- J.P.Chaurasia*** [(1989) 1 SCC 121] the Hon'ble Supreme Court noticed that entitlement to a pay scale depends upon several factors and sounded a note of caution :

"It does not just depend upon either the nature of work or volume of work done. Primarily it requires, among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degree in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interest parties."

(b) In ***Secretary, Finance Department -vs- W.B. Registration Service Assn.*** [1993 SCC (L&S) 157] Hon'ble Apex Court tried to enumerate the factors that may be taken into consideration for job evaluation which necessarily involves 'job analysis'. Hon'ble Court held :

"Ordinarily a pay structure is evolved keeping in mind several factors e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenue of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativity with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc.

There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error has crept in while fixing the pay scale for a given post and court's interference is absolutely necessary to undo the injustice."

(c) In **Union of India -vs- Makhan Chandra Roy** [(1997) 11 SCC 182] the Hon'ble Apex Court noticed that the Tribunal embarked upon the task of equating pay scale on the basis of the Directive Principles contained in Art. 39(d) of the Constitution and granted the reliefs by which the Laboratory Assistants were given a higher revised pay scale as prescribed for Auxiliary Nurses and Midwives. The Hon'ble Court observed :

"What enhanced pay scale should be given to a particular employee is within the domain of the authorities themselves who appointed them and the Tribunal should not have ventured in this forbidden field."

(d) In **Supreme Court Employees' Welfare Association -vs- UOI** [AIR 1990 SC 334] the Hon'ble Apex Court observed :

"It is really the business of the Government or the management to fix the pay scale after considering various other matters and the Court can only consider whether such fixation of pay scale has resulted in an invidious discrimination or is arbitrary or patently erroneous in law or in fact."

(e) However, where inequities were so glaring that Hon'ble Courts cannot ignore to give judicial attention, Hon'ble Courts have not failed to direct the executive authorities to remove the anomaly **[K.T.Veerappa -vs- State of Karnataka - 2006 SCC (L&S) 1823]**.

(f) In **Supreme Court Employees' Welfare Association -vs- UOI** [1989 SCC (L&S) 569] Hon'ble Apex Court examined the doctrine of equal pay for equal work and observed :

*"....So long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of 'equal pay for equal work', as envisaged by Article 39(d) of the Constitution, has no manner of application, nor is it enforceable in view of Article 37 of the Constitution. **Dhirendra Chamoli -vs- State of U.P.** [(1986) 1 SCC 637] is a case of 'equal pay for equal work', as envisaged by Article 14, and not of the abstract doctrine of 'equal pay for equal work'."*

(g) In **State of Haryana -vs- charanjit Singh** [(2006) 9 SCC 321] a Three Judges Bench of the Hon'ble Supreme Court while considering cases of persons employed on contract basis dealt with the principles of 'equal pay for equal work' and observed that the Court has power to make judicial review if the

executive faulted in the application of the principles of equality as enshrined in Art. 14 of the Constitution. However the Hon'ble Court cautioned that :

"Undoubtedly, the doctrine of 'equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a court of law. The principle of 'equal pay for equal work' has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities and characteristics must have a reasonable relation to the object sought to be achieved."

The Court's power in this regard is very limited and except for glaring discrimination owing to inequitable classification, the Court will exercise restraint. Noticing the amplitude of Art. 39(d) of the Constitution read with the Constitution Bench judgment in ***Keshvananda Bharati -vs- State of Kerala [AIR 1973 SC 1461]*** the Hon'ble Apex Court without taking upon itself the burden, allowed the appeal but curtly reminded the State its duties in this regard, thus :

"It must be ensured that there is no exploitation of poor and ignorant. It is the duty of the State to see underprivileged or weaker section get their dues. Even if they have voluntarily accepted the employment on unequal terms, State should not deny their basic rights of equal treatment."

(emphasis supplied)

6. In the aforesaid legal backdrop we noticed that fixing pay scales would be a forbidden field for the Court, at the same time we noted that the Expert Committee failed to evaluate the jobs of present applicant with identically nomenclatured posts of other departments.
7. In view of the aforesaid, we direct the authorities to refer the matter with suitable inputs and job evaluation of Transport Supervisor of the present department vis-a-vis that of other departments under Central Govt., with the earlier recommendations to the Anomalies Committee to be constituted in regard to the 7th Pay Commission.
8. The applicant shall be communicated of the decision so taken by the Anomalies Committee as and when the decision is taken in the matter.

9. The decision of the Anomalies Committee will then govern the case of the applicant.

10. The OA is accordingly disposed of.

11. No order is passed as to costs.

(JAYA DAS GUPTA)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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