

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. OA 350/01551/2014

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. R.Bandyopadhyay, Administrative Member

AMIT BARUA & ORS.

VS

UNION OF INDIA & ORS. (I&B)

For the applicants : Mr.A.Chakraborty, counsel

For the respondents : Mr.S.K.Ghosh, counsel

Order on : 30.9.15

O R D E RMs.Bidisha Banerjee, J.M.

The applicants in this OA essentially seek parity with the applicants in OA 1742/04 and OA 1743/04 decided by Principal Bench on 31.5.2006.

2. We note that in the said OAs the applicants who were Technicians, appointed after qualifying in the examination joined after 25.2.1999. They were seeking placement in the pay scale of Rs.4500-7000/- at par with their colleagues with all consequential benefits for working as Technicians as they were placed in the lower pay scale of Rs.4000-6000/-, instead of 4500-7000/-. They were aggrieved in regard to "non-accord of higher pay scale on the basis of cut off date" which would be an invidious discrimination due to denial of equal pay for equal work to the applicants. The respondents had applied a cut off date of 25.2.99. Those appointed prior to 25.2.99 were granted higher scale of pay of Rs. 6500-10,500/- while those recruited after 25.2.99 were granted the lower scale of Rs.5000-8000/-.

The Tribunal considered the matters in the following manner :

"14. The relevance to the cut off date now being explained by respondents is on the ground that the cut off date has been fixed with a purpose that those government employees who had switched over to Prasar Bharti from Government were granted the higher pay scale as an incentive. In OA-1743/2004 applicants had also sought to join the Prasar Bharti as direct recruits the cut off date is incidentally the decision taken by the respondents. These are employees who had been

of the batch of 1994-95 though their juniors in the merit of Engineering Assistants having joined earlier are accorded higher pay scale whereas on the technicality of non-completion of formality as to verification etc. without any fault attributable to applicants delayed their joining which has deprived them of the higher pay scale. If as an incentive higher pay scale is accorded on the basis of joining the same cannot be denied by virtue of delayed joining. The cut off date of 25.2.1999 has no reasonable nexus and intelligible differentia with any underlined object or nexus with the object sought to be achieved. Applicants who are equally placed are not considered for grant of higher pay scale merely because they are entrants of 1994-95 batch, the other members of the batch had been accorded the higher pay scale having denied to applicants constitutes a differential treatment and a class legislation and also an unequal treatment meted out to equals is an invidious discrimination, which cannot be sustained in the wake of principles of equality, enshrined under Article 14 of the Constitution of India. However, the relevance of the cut off date now shown and explained by respondents is not reasonable.

15. As regards applicants in other OA, we find that the higher pay scale has been given on the basis of the cut off date to those promotee Assistants under 20% quota who had been promoted as Engineering Assistants and are placed below in the seniority list, yet being juniors they are enjoying the higher pay scale and even on promotion would get higher pay scale and this would be maintained throughout the service career of these Technical Assistants. It is very strange that being junior one is allowed to enjoy higher pay scale. The aforesaid aspect of the matter has not been looked into by the respondents, as representations preferred by applicants have not been responded to.

16. In the result, for the foregoing reasons, we dispose of these OAs, with a direction to respondents to re-examine the claim of applicants for grant of higher pay scale of Rs.6500-10,500/- as Engineer Assistants, in the light of the observations made above and disposed of the same by passing a detailed and speaking order, within a period of three months from the date of receipt of a copy of this order. In the event it is decided to grant higher pay scale to applicants, consequences would follow. No costs.”

(emphasis supplied)

3. It has been strenuously argued by the ld. Counsel for the applicant that where the employees enter the cadre from two different sources, if they do the same work and are similarly placed, there can be no discrimination in payment of wages. Since the applicants render the same work like the Technicians who were appointed before 25.2.1999, therefore there should not be any discrimination in payment of wages.

It is further urged by the ld. counsel that there is a complete parity between the Technicians who joined before 25.2.1999 and those who joined after 25.2.1999. Therefore it is discriminatory to treat the employees merely on account of two coming from two different sources.

It has been further urged that the decision of the Principal Bench has been upheld by Hon'ble High Court and duly implemented by the respondents.

The same benefit should be extended to them. In support, order dt. 14.10.14 has been placed on record. It reads thus :

"Whereas the Principal Bench of CAT, Delhi has observed that para 4 of the OM dated 25.2.1999 of Ministry of I&B upgrading the pay scales of only certain employees is not sustainable in terms of the Article 14 of the Constitution of India.

Whereas the above mentioned court order was referred to Ministry of I&B for a decision and the Ministry of I&B, after consultation with Ministry of Finance, has conveyed through letter No. 515/50/2011-BA(E) part file dated 23.9.14 that the Ministry of Finance has approved implementation of Hon'ble CAT order dated 31.5.2006 in OA No. 1742/1743 of 2004 in the case of Sh. Lalit Kumar Pawar & Ors. and Sh. Mahender Singh Rana -vs- UOI respectively in respect of applicants only.

Therefore , in view of the above directions of the Principal Bench of Cat, Delhi and approval of the Ministry of I&B, it has been decided to extend the pay scale of Rs.6500-10500/- to the 6 (six) applicants of OA No. 1742/1743 of 2004 only w.e.f. their date of joining (i.e. on or after 25.2.1999) with consequential benefits.

This issues with the approval of the competent authority."

4. Per contra the respondents have submitted that the newly entrant Govt. servants who have joined after 25.2.1999 have been given the recommended pay scale of 5th CPC. Only those Technicians who were appointed on or before 25.2.1999 had been given higher pay scale. Thus the juniors are not getting the higher pay except the promotees, as length of service of a promotee may differ from the newly entrants. Promotees are being treated as per the MIB's order dated 25.2.1999.

5. The respondents cited the following decision in order to contend that equal pay must be for equal work. He referred to the decision of **State of Haryana -vs- Charanjit Singh [(2006) 9 SCC 321]** wherein the following ratio was propounded –

"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. But equal pay must be for equal work of equal value. The finding in *Devinder Singh case*, (1998) 9 SCC 595, that for similar work the principle of equal pay applie., cannot be accepted. Equal pay can only be given for equal work of equal value.

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The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.

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In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled, it may direct payment of equal pay from the date of the filing of the respective writ petition. In each case the court must satisfy itself that the burden of proving that the work and conditions are equal is discharged by the aggrieved employee."

In the case at hand we find no notable intelligible differentia in grant of two scales of pay to employees doing the same work. As such we are of the opinion that the cited judgment will not apply to the present fact situation.

6. We have heard the 1d. Counsels for the parties and perused the materials on record:

7. It is trite that fixation of pay is a forbidden field for Courts and to determine equality in the matters of pay parity, factors like qualification, experience, nature of work have to be examined as decided by the Hon'ble Apex Court in the case of **State of Himachal Pradesh -vs- Tilak Raj [2015(1) AISLJ 300]**. But in the case at hand we have failed to discern any such notable factors which would justify grant of lower pay scale simply on the basis of a cut off date. The authorities have classified the employees on the basis of date of entry, how and in what manner it has any nexus to the object sought to be achieved, is difficult to comprehend.

8. We note that the Court's power in this regard is very limited and except for glaring discrimination owing to inequitable classification, the Court will exercise restraint.

9. In **Supreme Court Employees' Welfare Association -vs- UOI [1989 SCC (L&S) 569]** the Apex Court observed that the sweep of Art. 14 of the Constitution is all pervasive. It extends also to the executive decisions. In this context the Court examined the doctrine of equal pay for equal work and observed –

“....that although the doctrine of 'equal pay for equal work' does not come within Article 14 of the Constitution as an abstract doctrine, but if any classification is made relating to the pay scales and such classification is unreasonable and/or if unequal pay is based on no classification, then Article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to

be given for equal work. In other words, where unequal pay has brought about a discrimination within the meaning of Article 14 of the Constitution, it will be a case of 'equal pay for equal work', as envisaged by Article 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object sought to be achieved, the doctrine of 'equal pay for equal work' will not have any application even though the persons doing the same work are not getting the same pay. In short, 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 v State of U.P. [(1986) 1 SCC 637; 1986 SCC (L&S) 187]* 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'."

10. In the aforesaid backdrop, since the respondents have failed to justify why the ratio of OA 1742/04 and OA 1743/04 (supra) shall not apply to the present applicants, we dispose of this OA with a direction upon the concerned respondent to examine the grievance of the present applicants in the light of the said decisions and pass a reasoned and speaking order within three months. If nothing stands in their way, let appropriate benefits be released by one month thereafter.

11. The OA is accordingly disposed of. No order is passed as to costs.

(R. BANDYOPADHYAY)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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