

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2622/2003

This the 4th day of June, 2004

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A. SINGH, MEMBER (A)

1. Diploma Engineers' Association
(Affiliated to All India Federation of
Diploma Engineers)

(a) Office Address:
510, Army Base Workshop
Meerut Cantonment, Meerut
through Mr. S.K.Sharma,
General Secretary

(b) Address for service of all notices:
B-271, Shradha Puri, Phase II,
Near New Telephone Exchange,
Kankar Khera
Meerut Cantt.-250001.

(Representing all others enlisted separately)
2. Mr. Amritanshu Rastogi
Telecom Mechnic (Radar)

(a) Office Address:
510, Army Base Workshop
Meerut Cantonment, Meerut

(b) Address for service of all notices:
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Garh Road, Meerut-250001
3. Mr. Pradeep Singhal

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Meerut Cantonment, Meerut

(b) Address for service of all notices:
R/o 328/6, Shastri Nagar,
Meerut-250005.

(By Advocate: Sh. Brahm Bhatt)

Versus

1. Union of India
through the Secretary to the Govt. of India

(a) Office address for service of all notices:
Ministry of Defence,
South Block,
New Delhi-110001.

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2. Director General
(a) Office address for service of all notices:
Electrical & Mechanical Engineering (Civ-1)
Directorate of EME, Army Head Quarters DHQ
New Delhi-110011.

(By Advocate: Sh. K.R.Sachdeva)

O R D E R

By Sh. Kuldip Singh, Member (J)

This OA has been filed by Diploma Engineers Association seeking following relief:-

(i) Pay scale of Rs.5000-8000 as recommended by the Vth CPC w.e.f. 1.1.1996 to the applicants Diploma Engineers working on the posts of H.S. Grade-1 as has been strongly justified by their appointing authority and also by their Directorate General.

(ii) Consequential financial benefits flowing there from i.e. payment of arrears etc.

2. Applicants claim to be holding Diplomas in Engineering from various Engineering Polytechnics of a duration of 3 years, after a minimum qualification of matriculation for admission in Polytechnics. It is further stated that on 13.3.87 a decision was taken to lift the ban on recruitment of civilian industrial employees. As a matter of fact there was no Recruitment Rules in force for different industrial employees. So pending the formulation of recruitment rules the Govt. of India issued specific orders for recruitment to the persons to the Civilian Industrial Group C posts as direct recruits.

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3. As per recruitment to the post of highly skilled grade-I it was prescribed in Annexure-II that direct recruitment to HS Grade-I post be taken up where the minimum qualification should be Diploma in Engineering with 3 years duration in the respective field of engineering. Consequent to that order applicants had been appointed as HS Grade-I by virtue of their holding the qualification of Diploma in Engineering of 3 years. Before the recruitment, advertisement was also issued in Hindustran Times dated 11.8.1987 prescribing minimum qualification for recruitment of HS Grade-I as Diploma in Engineering in the relevant field of engineering. Applicants applied in response to the said advertisement and they were selected and were appointed as HS Grade-I. The sample of offer of appointment is also annexed as Annexure-4. According to this offer of appointment they were to be paid salary in the pay scale of Rs.1320-30-1560-EB-40-2040. Their duties were also assigned as per Annexure-5. Thus, it is submitted that in view of the facts that all the applicants are holding the Diploma in Engineering but they have not been given proper pay scale of Rs.5000-8000 as prescribed by the Govt. for all such posts where the Diploma is an essential qualification for recruitment.

4. It is further stated that Diploma Engineers in other departments are getting proper pay scales but the applicants' request has been ignored. Applicant further submit that they had earlier filed an OA-1280/93 but the same was not allowed as at that point of time the recommendations of 4th CPC on which the OA was basically based were not as explicit and strong in favour of the applicants as per the recommendations of the Vth CPC.



5. It is further stated that applicants had also preferred a civil writ petition before the Hon'ble High Court but the same was dismissed as withdrawn on the plea of the counsel that he would place on record certain documents which he could not file before the Tribunal. Though an MA was filed later on but the same was also dismissed.

6. It is further submitted that the Vth CPC has specifically prescribed that Diploma Engineers who were getting the pre-revised pay scale of Rs.1400-2300 were brought up to the pre-revised pay scale of Rs.1600-2600 and thereafter a revised pay scale of Rs.5000-8000 that is to be granted to all the Diploma Engineers working in any department of the Govt. of India. Applicants made various representations. It is also stated that matter was also taken up with the Anomaly Committee. It is also submitted that the Commandant of the workshop in his letter dated 8.1.1998 has strongly recommended the pay scale of Rs.5000-8000. Directorate of EME, Army Headquarters also recommended justifying the pay scale of Rs.5000-8000. However, the applicants are not being granted the pay scale. It is also insisted that applicants are performing highly technical duties and having regard to the nature of duties they are entitled to the pay scale of Rs.5000-8000 as recommended by the Pay Commission. Thus the applicants are being discriminated in the matter of grant of pay.

7. Respondents are contesting the OA. Respondents submit that similar OA was earlier filed and the Court had found that applicants were already diplomaholders. They were not appointed to the post designated as Diploma Engineers but they have been appointed as industrial workers in the pre-revised

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scale of Rs.1325-2040 and the corresponding pay scale of which is Rs.4000-6000. It was also observed that candidates having passed ITI and three years experience or a candidate having educational qualification of 10+2 with Maths and Physics were also eligible as highly skilled grade-I.

8. Respondents admit that on establishment of Schilka repair facilities, the workshop was engaged in upgradation of 'A' and 'B' veh engines and their overhaul in addition to fabrication of specialist vehicles during the year 1987. Accordingly the demand of vacancies were placed on Employment Exchange, Meerut but due to non-availability of ITI candidates in those trades, Employment Exchange gave NA certificate to fill up vacancies through local market. So advertisement was published giving clear terms and conditions of employment against pay scale Rs.1320-2040. Since ITI tradesman were not available, so preference was given to diplomaholders giving willingness to apply in the pay scale of Rs.1320-2040. The names of such diplomaholders were also sponsored by Employment Exchange against those vacancies against the pay scale of Rs.1320-2040 which were clearly stated in the advertisement. Appointments were given to the selected candidates and terms and conditions were made clear to them.

9. It is further stated that the duties which are being performed by the applicants are also being performed by the other similar tradesman who were appointed on the basis of ITI certificates after passing trade test. Thus, it is prayed that the OA be dismissed.

10. We have heard the learned counsel for the parties and gone through the record.

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11. Learned counsel appearing for the applicant submitted that according to the 5th CPC report particularly para 43.15 which reads as under:-

"Presently, incumbents of a large number of posts requiring qualifications of ordinary Graduation or a three year Diploma course in engineering, fine art etc. are in different scales, i.e., Rs.1200-2040, Rs.1400-2300, Rs.1400-2600, Rs.1600-2660 and Rs.1630-2900. In order to bring about improvement, it is proposed to induct entrants to the posts requiring graduation, three year diploma course etc. as minimum entry qualification in the scale of Rs.1400-2300, Rs.1600-2660 and Rs.1640-2900. Most of the Jr. Engineers, Jr. Scientific Assistants, Technical Assistants, Investigators etc. who are presently distributed in these different scales will be benefited by this measure of rationalisation. However, there may still be some exceptional cases where this improvement has not been effected. This has been due to various factors like job content, skill requirements, inter se horizontal and vertical relativities etc."

12. Relying upon the same, counsel for applicant submitted that the Pay Commission had upgraded the post which require diploma course as minimum entry qualification to the pay scale of Rs.1400-2300, Rs.1400-2600, Rs.1600-2660 and Rs.1640-2900 and replacement scale has been given as Rs.5000-8000, so the same should be given to the applicants as applicants when entered into service were holding Diploma in Engineering and their qualification is at par with the qualification mentioned in para 43.15 of the Vth CPC report so by not giving them pay scale of Rs.5000-8000 there have been discrimination in a hostile manner. So applicants are entitled for the pay scale of Rs.5000-8000.

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13. Counsel for applicant then also referred to a recent judgment given by the Hon'ble Supreme Court in case of M.P. Rural Agriculture Extension Officers Association vs. State of M.P. and another and stressed that pay scale on the basis of academic qualification or experience can be granted to the applicants.

14. In the said case the matter with regard to the pay scale of Rural Agriculture Extension Officers came under consideration. The M.P. Govt. had framed rules under Article 309 of Constitution of India known as Madhya Pradesh Revision of Pay Rules, 1983. According to these rules two different scales of pay were prescribed, namely, Rs.575-880 for non-graduates (Dying scale) and Rs.635-950 for fresh recruitment and for existing B.Sc./B.Sc. Agriculture. By reasons of an executive instruction dated 2/5.3.1984, the officers who were matriculates through their association had filed a writ petition praying that pay scale of Rural Agriculture Extension Officers be given in accordance with the ratio given in AIR 1984 SC 1221. The matter came to be transferred to Madhya Pradesh State Administrative Tribunal. The Tribunal gave finding that though the applicants have been treated discriminately but matter regarding pay scale be dealt with by the Pay Commission. A writ petition was filed against before the M.P. High Court which was also dismissed.

15. The matter was challenged before the Hon'ble Supreme Court. An appeal filed by the Hon'ble Supreme Court was also dismissed.

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16. Counsel for applicant submitted that on the basis of qualifications the graduates in the rural extension service have been granted higher pay. On the same analogy, the applicants who are diplomaholders they can also be granted higher pay on the basis of their qualification.

17. On the contrary, learned counsel for respondents submitted that the department required only industrial workers of HS Grade-I. The prescribed qualification for the same was as ITI and matriculation with some experience etc. But on a given point of time when ITI people were not available, a preference was given to diplomaholders but the applicants were not appointed against a post for which the minimum qualification is diplomaholder as an essential qualification.

18. Counsel for respondents further pointed out that for invoking the doctrine of equal pay for equal work, the Court is not only to consider the academic qualification of the employee on the stage of entry to the service but is also to see nature of duties and various other things and in this regard the learned counsel for respondents referred to a judgment given by the Hon'ble Supreme Court in case of State of Haryana and others vs. Tilak Raj and others reported in 2003 (6) SCC 123 wherein it has been held that principle of equal pay for equal work is not easy to appeal. There are inherent difficulties in comparing and evaluating the work done by different persons in different organisations. It is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

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19. Respondents then also referred to a judgment of Union of India vs. Taritranjan Das reported in 2003 (11) SCC 658 wherein also it has been held that equal pay for equal work principle cannot be applied merely on the basis of the designation of nature of work. Other relevant factors were also to be seen. It was also observed that the conclusion of the Pay Commission are not open to judicial review.

20. Besides that learned counsel for respondents further submitted that applicants had agitated the issue earlier also when they had filed an OA before this Tribunal and this Court had categorically observed that since the applicants had joined the service against post which are in the pay scale of Rs.1320-2040 and they were seeking parity with the pay scale of Rs.1400-2300 on the ground that they are diplomaholders and since the diplomaholders in other departments in the Govt. were drawing the pay scale of Rs.1400-2300.

21. Court had found that it was essential for the applicants to establish that the duties, functions and responsibilities of the post to which they have been appointed and which carries the pay scale of Rs.1320-2040 are similar in all respects with the post which carry the pay scale of Rs.1400-2300 which is being manned by persons who are diplomaholders in several departments of Govt. and merely because respondents had engaged diplomaholders in the scale of Rs.1320-2040 where the minimum qualification is ITI certificate or 10+2 certificate does not automatically entitles them to a higher pay scale.

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22. In our view also, it is an admitted case of the applicants themselves that they have been recruited only against the post of HS Grade-I which post can be filled up by a person holding a ITI certificate or even 10+2 certificate, holding of diploma in Engineering is not an essential qualification. Merely because the applicant are holding Diploma in Engineering that will not entitle them to compare themselves with those posts for which the minimum qualification is Diploma in Engineering.


23. Even as regards para 43.15 referred to of the Vth CPC the para starts with the sentence that where the posts "requiring qualification" of ordinary graduation or a 3 years Diploma course in Engineering, fine arts etc. are in different scales meaning thereby all those posts where the minimum qualification required is either "ordinary graduation" or "3 years Diploma course in Engineering". So their pay scales had been upgraded. But for the post of HS Grade-II the required qualification is only ITI certificate or 10+2 certificate with 3 years experience and not the diploma of duration of 3 years in Engineering, so the applicants cannot compare themselves with those posts where the requirement is of diploma course in Engineering.

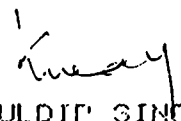
24. As regards the judgment cited by the counsel for applicant is concerned, that judgment only lays down the principle that where the state of its own had given a higher scale to a person having higher qualification but on the contrary when the application of principle of equal pay for equal work is concerned, then for every job which is to be compared with another job, it is not only the qualification which are material but it is also the nature of duties and the

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recruitment rules of the posts held are all factors to be seen and in this case since the post held by the applicants are that of industrial worker of HS Grade-II, so applicants can compare themselves with similar persons who are also holding similar post and are also performing the similar nature of job. But mere holding of same qualification cannot be the sole criteria for grant of higher pay.

25. In these circumstances and in view of the above discussion, we are of the considered opinion that applicants are not entitled to the pay scale of Rs.5000-8000 on the basis of the qualification alone as recommended by the 5th CPC for diplomaholders. OA is, therefore, dismissed. No costs.


(S.A. SINGH)
Member (A)


(KULDIP SINGH)
Member (J)

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