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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

AJAY RASTOGI; J., BELA M. TRIVEDI; J.

CIVIL APPEAL NO. 8329 OF 2011; 22.02.2023

UNION OF INDIA *versus* INDIAN NAVY CIVILIAN DESIGN OFFICERS ASSOCIATION AND ANR.

Equal Pay For Equal Work - The doctrine “equal pay for equal work” is not an abstract doctrine and is capable of being enforced in a Court of Law, the equal pay must be for equal work of equal value. The equation of posts and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Courts therefore should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. (Para 14)

Equal Pay for Equal Work - It may be true that the nature of work involved in two posts may sometimes appear to be more or less similar, however, if the classification of posts and determination of pay scale have reasonable nexus with the objective or purpose sought to be achieved, namely, the efficiency in the administration, the Pay Commissions would be justified in recommending and the State would be justified in prescribing different pay scales for the seemingly similar posts. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues or frustration due to longer duration of promotional avenues is also an acceptable reason for pay differentiation. It is also a well-accepted position that there could be more than one grade in a particular service. The classification of posts and the determination of pay structure, thus falls within the exclusive domain of the Executive, and the Courts or Tribunals cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service. (Para 14)

Judicial Review - The powers of judicial review in the matters involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning the finance, are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party. (Para 17)

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For Respondent(s) Mr. Salman Khurshid, Sr. Adv. Mrs. Naghma Imtiaz, Adv. Mr. Zargham Ahmed, Adv. Mr. Saif Naseem, Adv. Mrs. Arushi Jain, Adv. Mrs. Shama Usmani, Adv. Mr. Ishu Dixit, Adv. M/S. Equity Lex Associates, AOR

J U D G M E N T

BELA M. TRIVEDI, J.

1. By way of present appeal, the appellant-Union of India has challenged the judgment and order dated 02.08.2010 passed by the High Court of Delhi, in WP(C) No. 1006 of 2008, whereby the High Court had dismissed the Writ Petition filed by the appellant and confirmed the judgment and order dated 08.06.2007 passed by the Central Administrative Tribunal (hereinafter referred to as the ‘Tribunal’) in O.A. No. 2228 of 2006.

2. The respondent-Indian Navy Civilian Design Officers Association had by way of filing the O.A. No.2223/2006 before the Tribunal, challenged the decision of the appellant rejecting their representation for the grant of pay scale of Rs.7500-12000 to the Junior Design Officers as allowed to the Civilian Technical Officers (Design), consequent to the implementation of the Fifth Central Pay Commission. As per the case of the respondent-association, the cadre of Design officers in the Indian Navy was created in the year 1965 in order to meet with the functional requirements of Navy regarding specific assignments to the Naval dockyards, Training, Establishments, Directorate of Naval Design and other Technical Directorates of Naval Headquarters. The drawing staff in the Navy belonged to diverse disciplines such as Construction, Electrical, Engineering and Armament. So far as the disciplines of Construction, Electrical and Engineering were concerned, the Group 'B' gazetted posts were designated as Junior Design Officers (JDOs), and for Armament disciplines, the Group 'B' gazetted posts were designated as Civilian Technical Officers (CTOs) (Design). The Recruitment Rules governing the JDOs notified by SRO 367 dated 08.12.1996, were amended by SRO 246 dated 21.11.2002. The Recruitment Rules for the post of CTOs (Design) were notified by SRO 132 dated 12.05.1982.

3. As per the further case of the respondent-Association, up to the Fifth Central Pay Commission, all the pay scales of all the disciplines and all grades were the same, however, after the recommendations of the Fifth Pay Commission, the pay scale of Rs.7500-12000 was fixed for the CTOs, whereas the pay scale of Rs.7450-11500 was fixed for the JDOs. Since the pay scales of the feeder cadre had remained the same in all the disciplines, the respondent-Association had made representation to the appellant for the grant of revised pay scale of Rs. 7500-12000 to the JDOs as allowed to the CTOs (Design) consequent upon the implementation of the Fifth Central Pay Commission. The Ministry of Finance having rejected the respondent's proposal for upgradation of the pay scale, the respondent-Association had filed the O.A. No. 1730 of 2003 before the Tribunal. The Tribunal vide the order dated 01.11.2004 disposed of the said O.A. with direction to the appellant to consider the parity of pay scale of JDOs along with CTOs by evaluating their duties and responsibilities and to pass a detailed speaking order.

4. The Ministry of Finance reconsidered the said representation of the respondent-Association, however, again rejected the same by a speaking order on 07.04.2006. Being aggrieved by the said order, the respondent-Association had preferred the O.A. No. 2228 of 2006 before the Tribunal, which came to be allowed vide the order dated 08.06.2007. The Tribunal set aside the order dated 07.04.2006 passed by the appellant-UOI and directed the appellant to grant to the JDOs, the pay scale of Rs. 7500-12000 at par with Group 'B' gazetted posts of CTOs (Design) from the same date as it was given to the Group 'B' gazetted posts with all consequential benefits. The appellant being aggrieved by the said order passed by the Tribunal had filed W.P(C) No. 1006 of 2008, which came to be dismissed by the High Court vide the impugned order.

5. The main question that falls for consideration before this Court is whether the Tribunal and the High Court were justified in equating the posts of JDOs with CTOs, and in fixing the pay scales of JDOs equivalent to that of CTOs, in utter disregard of the legal position settled by this Court in catena of decisions to the effect that the Courts should not interfere with the complex issues of evaluating the nature of duties

and responsibilities of posts, and of fixing the pay scales, which task otherwise is best done by the expert bodies like the Pay Commission.

6. The learned Senior Advocate Mr. R. Bala Subramanyam appearing for the appellant placing heavy reliance upon the decision of the Ministry of Finance dated 07.04.2006 submitted as under:

(i) The posts of JDOs and CTOs are governed by two different sets of Rules. Accordingly, the qualifications for recruitment/promotion in the case of CTOs are higher than that of the JDOs;

(ii) The probation period in case of CTOs is longer than that of JDOs;

(iii) The duties and responsibilities attached to the posts of CTOs are more onerous, varied and challenging as compared to that of JDOs;

(iv) The post of CTOs also exists in other streams like R&D in the revised pay scale of Rs. 7500-12000. These posts could not be given the lower pay scale of Rs. 7450-11500, as the feeder post of foreman exists in the said pay scale.

(v) As the post of CTOs in different streams within the Naval Armament Inspection Organizations were already in the higher pay scale of Rs. 7500-12000, the same pay scale had to be extended to the CTOs (Design) as well, whereas no such exigency existed in case of the post of JDOs.

(vi) The pay scales for the posts of the JDOs and CTOs were fixed on the basis of the specific recommendations of the Fifth Central Pay Commission, and therefore the Tribunal as well as the High Court had committed gross error in interfering with the same and in upgrading the pay scale of JDOs to put them at par with CTOs (Design).

7. Mr. R. Bala Subramanyam has also placed on record the chart showing the promotional hierarchy of CTOs and JDOs in different CPCs: -

Promotional hierarchy of CTO and JDO in different CPCs

S. No	Promotional hierarchy of JDO	Promotional hierarchy of CTO (Design)	Pay Scale			
			4 th CPC	5 th CPC	6 th CPC	7 th CPC
1	Principal Design Officer-I	-	-	14500-18300	37400-67000, GP-8700	L-13
2	Principal Design Officer	Principal Technical Officer (D)*	3700-5000	12000-16500	15600-39100, GP-7600	L-12
3	Senior Design Officer GD-I	Senior Technical Officer (D)	3000-4500	10000-15200	15600-39100, GP-6600	L-11
4	Senior Design Officer GD-II	-	2200-4000	8000-13500	15600-39100, GP-5400	L-10
5	-	Civilian Technical Officer (D)	2000-3500 (upgraded to 2500-4000 in 5 th CPC)	7500-12000	9300-34800, GP-4800	L-8
6	Junior Design Officer	-	2000-3500 (upgraded to 2375-3500 in 5 th CPC)	7450-11500	9300-34800, GP-4600	L-7
7	Chief D'Man	Chief D'Man	2000-3200	6500-10500	9300-34800, GP-4600	L-7
8	Senior D'Man	Senior D'Man	1400-2300	5000-8000	9300-34800, GP-4200	L-6
9	D'Man	D'Man#	1200-2040	4000-6000	5200-20200, GP-2400	L-4

* New grade of PTO(D) created in the cadre restructuring on 29 Oct. 2020.

The posts of D'Man in NAI cadre has been abolished in the cadre restructuring on 29 Oct. 2020.

- Grade/Posts doesn't exist in cadre.

8. Per contra, learned senior advocate Mr. Salman Khurshid appearing for the respondent-Association made the following submissions-

(i) The Fifth Pay Commission had ignored the fact that from the very beginning, the posts of JDOs and CTOs (Design) carried the same pay scales, as they were having the same duties and responsibilities.

(ii) The post of Senior Foreman was granted the pay scale of Rs. 7450-11500, which was the pay scale granted to the JDOs, though the JDOs in the course of their duties had to supervise the work of Chief Draughtsman and Senior Foreman.

(iii) The department itself had strongly supported the case of JDOs by putting a note dated 16.02.2005 recorded by the Joint Director who had recommended upgradation of the pay scale of JDOs and for putting them at par with CTOs (Design).

(iv) Up to the Fourth Pay Commission, both the posts were carrying the same pay scale.

(v) There would not have been any cascading effect if the pay scale of JDOs was upgraded, as the post of JDOs did not exist in the other organizations like EME, MES, and Air Force etc. and the financial implications were also not very big.

(vi) The essential qualifications in the Recruitment Rules for CTO (Design) and in the Recruitment Rules for JDO were also more or less same and the promotional avenues in both the cadres were also similar.

9. Before adverting to the rival contentions raised by the learned counsels for the parties, it deserves to be noted that the power of judicial review of the High Courts in the matter of classification of posts and determination of pay scale is no more *res integra*. It has been consistently held by this Court in plethora of decisions 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 had crept in while fixing the pay scale for a given post and the interference of the Court was absolutely necessary to undo the injustice.

10. In ***State of U.P. and Others Vs. J.P. Chaurasia and Others***¹, while answering the questions as to whether the Bench Secretaries in the High Court of Allahabad were entitled to pay scale admissible to the Section Officers and whether the creation of two grades with different scales in the cadre of Bench Secretaries who were doing the same and similar work was violative of the right to have “equal pay for equal work”. This Court observed as under: -

“18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. 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 degrees 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 interested parties. The equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept

¹ 1989(1) SCC 121

it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.”

11. The afore-stated ratio was followed by this Court in *Union of India and Others Vs. Makhan Chandra Roy*². Again, in *Secretary, Finance Department and Others Vs. West Bengal Registration Service Association and Others*³, the claim of Sub-Registrars of West Bengal Registration Service claiming parity in pay scale with Munsiffs on the basis that Sub-Registrars were conferred gazetted status, was examined by this Court. It was elaborately observed in para 12 as under: -

“**12.** We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time-consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broad banding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies. 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) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration Service before him in his capacity as the Chairman of the Third (State) Pay Commission. 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

² 1997 (11) SCC 182

³ 1993 Suppl. (1) SCC 153

grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice.”

12. In *State of Haryana and Others Vs. Charanjit Singh and Others*⁴, a three-judge Bench in a referred matter considered whether the doctrine of “equal pay for equal work”, was an abstract doctrine, and observed thus: -

“**19.** Having considered the authorities and the submissions we are of the view that the authorities in the cases of *Jasmer Singh* [(1996) 11 SCC 77 : 1997 SCC (L&S) 210 : AIR 1997 SC 1788 : (1997) 2 LLJ 667] , *Tilak Raj* [(2003) 6 SCC 123 : 2003 SCC (L&S) 828] , *Orissa University of Agriculture & Technology* [(2003) 5 SCC 188 : 2003 SCC (L&S) 645 : (2003) 2 LLJ 968] and *Tarun K. Roy* [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] lay down the correct law. 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 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 or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. 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. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. 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 all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors.”

13. In *Union of India through Secretary, Department of Personnel, Public Grievances and Pensions and Anr. Vs. T.V.L.N Mallikarjuna Rao*⁵, this Court reiterated the said position: -

⁴ 2006 (9) SCC 321

⁵ (2015) 3 SCC 653

“26. The classification of posts and determination of pay structure comes within the exclusive domain of the executive and the Tribunal cannot sit in appeal over the wisdom of the executive in prescribing certain pay structure and grade in a particular service. There may be more grades than one in a particular service.”

14. In view of the afore-stated legal position, it clearly emerges that though the doctrine “equal pay for equal work” is not an abstract doctrine and is capable of being enforced in a Court of Law, the equal pay must be for equal work of equal value. The equation of posts and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Courts therefore should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions which undertake rigorous exercise for job evaluation after taking into consideration several factors like the nature of work, the duties, accountability and responsibilities attached to the posts, the extent of powers conferred on the persons holding a particular post, the promotional avenues, the Statutory rules governing the conditions of service, the horizontal and vertical relativities with similar jobs etc. It may be true that the nature of work involved in two posts may sometimes appear to be more or less similar, however, if the classification of posts and determination of pay scale have reasonable nexus with the objective or purpose sought to be achieved, namely, the efficiency in the administration, the Pay Commissions would be justified in recommending and the State would be justified in prescribing different pay scales for the seemingly similar posts. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues or frustration due to longer duration of promotional avenues is also an acceptable reason for pay differentiation. It is also a well-accepted position that there could be more than one grade in a particular service. The classification of posts and the determination of pay structure, thus falls within the exclusive domain of the Executive, and the Courts or Tribunals cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service.

15. So far as the facts of the present case are concerned, it is not disputed that the Recruitment Rules governing the JDOs are as per the SRO 367 dated 08.12.1996, as amended by SRO 246 dated 21.11.2002, whereas the Recruitment Rules governing the CTOs (Design) are as per the SRO 132 dated 12.05.1982. The probation period in case of CTOs is longer than that of JDOs. The duties and responsibilities of both the posts are different and the promotional avenues also have different duration and different criteria. There was not a single error, much less grave error pointed out by learned Senior Advocate. Mr. Khurshid, in the fixation of the pay scales for the JDOs and CTOs, which would have justified the interference of the Tribunal.

16. Much emphasis was placed by the learned senior advocate Mr. Khurshid on the noting made by the Officer of the Naval Department in the file recommending pay scale of JDOs equivalent to that of CTOs, however, it may be noted that a noting recorded in the file is merely an expression of opinion by a particular officer, and by no-stretch of imagination such noting could be treated as a decision of the Government⁶.

17. The powers of judicial review in the matters involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning

⁶ (2009) 15 SCC 705

the finance, are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party.

18. In that view of the matter, we are of the opinion that the Tribunal and the High Court had committed gross error in interfering with the pay scales recommended by the Fifth Central Pay Commission and accepted by the appellant for the posts of JDOs and CTOs, and in upgrading the pay scale of JDOs making it equivalent to the pay scale of CTOs.

19. Consequently, the impugned orders passed by the High Court and the Tribunal are quashed and set aside. The appeal stands allowed accordingly.

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