

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 23rd July, 2010*
Judgment Delivered On: 2nd August, 2010

+ **W.P.(C) NO.1006/2008**

UOI THR. SECRETARY MINISTRY
OF DEFENCE Petitioner
Through: Mr.H.K.Gangwani, Advocate

versus

INDIAN NAVY CIVILIAN DESIGN OFFICERS'
ASSOCIATION THR. SWAPAN DEB & ANR. Respondents
Through: Mr.M.K.Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. To meet the functional requirements of the Indian Navy regarding specific assignments of the naval dockyards, technical directors of naval headquarters and training establishments the cadre of design officers in the Indian Navy was created in the year 1965.

2. The drawing staff in the Navy was put into two diverse disciplines. The first was in the construction, electrical, engineering and armament discipline. Group-B gazetted posts in the disciplines of construction, electrical and engineering were created and the officers were designated as junior design officers (JDO). The second division was armament in which

posts designated as civilian technical officers (CTO Design) were created.

3. Since inception, for purposes of direct recruitment, the educational qualification required for the post of JDO was a degree in naval architecture. Period of probation was one year before confirmation. For CTO (Design), educational qualification was a second class degree in mechanical engineering/electrical engineering. Period of probation was one year before confirmation. For induction by way of promotion to the post of JDO, eligibility was a chief draughtsman with two years regular service in grade I or draughtsman grade I with five years regular service in the grade who qualified departmental qualifying examination. For induction by way of promotion to the post of CTO, eligibility was Chief Draughtsman (armament) with three years' regular service in the grade along with the requisite experience in design and development of armament stores, gauges and jigs fixture etc.

4. Since inception, the two cadre were placed in the same pay scale, till the acceptance and implementation of the recommendation of the 5th Pay Commission and thus with effect from 1.1.1996 there came into existence a difference in the scale of pay applicable to the two posts. The post of CTO was placed in the scale of Rs.7500-12,000/- and that of JDO was placed in the scale of Rs.7450-11,500/-.

5. Persons holding posts as JDO made a representation to the Central Government through the Naval Headquarter alleging an anomaly and hence a discrimination. They claimed parity with the post of CTO and hence prayed that the post of JDO be placed in the scale of Rs.7500-12,000/-.

6. Inter alia it was highlighted that the reason why discrimination was apparent, was that in the past both posts were in the same scale of pay.

7. The Naval Headquarter agreed with the contention urged by persons holding the post of JDO and made a recommendation to the Central Government by writing; quote:-

“There is a justification for considering upgradation of the pay scale of the post of JDO at par with CTO (Design), Civilian Technical Assistant, Administrative Officer-I and Junior Scientific Officer in the Navy. All the said posts were in the pre-revised pay scale of Rs.2,000-3,500/2,375-3,500 and have been granted revised pay scale of Rs.7,500-12,000. But the post of JDO has been placed in the lower pay scale of Rs.7450-11500 equivalent to the pay scale of Sr. Foreman which was earlier a Group C post but later classified as Group B. It is also a fact that the feeder grade of Chief Draftsman was in the pre-revised scale of Rs.2000-3200 and the promotion post of JDO was in the scale of Rs.2375-3500. Going by the recommendations in para 46.13, the post of JDO should have been placed in the notional scale of Rs.2500-4000 to the post of JDO while, at the same time, adhering to their recommendation in para 46.13 for placing the promotional grade in the new notional scale in the case of CTO (Design). In regard to the duties of CTO (Design) and JDO, it is submitted that there are variations depending upon the place of posting. Neither of these posts can be categorized as performing higher duties and responsibilities; in fact we could describe their duties as complementary, the JDO involved in execution of the tasks and the CTO (Design) in inspection and standardization. The duties and responsibilities of the two, posts is placed at Flag X opposite.

The proposed upgradation of the pay scale of JDO does not have cascading effects and could therefore be considered in isolation. It does not also disturb the relativities between different cadres. It has been ascertained that the post of JDO does not exist in

organizations like the EME, MES, Ordnance Depots and Air Force. There will, therefore, be no repercussion in those organizations. There are 62 posts of JDOs in the Navy and the financial implication for the proposed upgradation would be approximately Rs.3.5 lakhs annually. This should not be a constraint considering that the lower pay scale was granted to them erroneously.””

8. The Central Government duly considered the representation made as also the recommendations of the Controlling Ministry i.e. the Ministry of Defence and after examining the issue rejected the claim for parity.

9. Aggrieved by the said rejection, the respondents filed OA No.2228/2006 praying for the quashing and setting aside of the order dated 7.4.2006 rejecting their claim and sought a direction against the petitioner to grant them pay in the scale of Rs.7,500-12,000/- i.e. at par with the post of CTO.

10. The respondents claimed parity on the grounds (i) That though the designation of the two posts i.e. JDO and CTO is different, but the nature of duties and responsibilities of the two are same except that they are placed in different disciplines of the Indian Navy. (ii) Further, before acceptance and implementation of the recommendation of the 5th Pay Commission both posts were in the same scale of pay. (iii) It was further pleaded that the feeder cadre to both the posts is the post of Chief Draughtsman and that the said post is in the scale of pay Rs.6,500-10,500/-. (iv) They further contended that while the educational qualifications prescribed in the recruitment rules for CTO require only a degree in Mechanical/ Electrical engineering or equivalent, the recruitment rules for JDO require a degree in Mechanical/ Marine engineering and additionally 2 years practical experience in design/installation/construction of ships. In other words it was

pleaded that education qualifications for both posts is the same but for JDO there was an additional requirement of two years' practical experience which was not there for CTO. (v) It was further pleaded that amongst others, persons holding posts of JDO supervise the work of Senior Foremen which post is also in the pay scale of Rs.7,450-11,500/-. Thus, it was pleaded that this has resulted in disturbing the vertical relativity between the post of JDOs and Senior Foremen.

11. Thus, on 5 grounds plea for parity was urged.

12. Repelling the claim of the respondents, the petitioner contended that matters pertaining to fixation of pay scales are purely administrative functions and that the Courts must not interfere in the same.

13. On merits, it was pleaded that the nature of duties of the two posts are entirely different and the two were contrasted as under:-

DUTIES OF JDO AND CTO

<u>JDO</u>	<u>CTO</u>
(a) Execute all technical, professional and administrative work entrusted to him.	(a) Responsible for ensuring quality, reliability and service-ability of all stores and associated test equipments, devices and apparatus held on charge of indigenization cell including the CAD system.
(b) Supervise the work done by the drawing staff.	
(c) Check the drawings produced by the draughtsman.	(b) Be thoroughly conversant with the NA stores taken up for indigenization for their operation, behavior, quality assurance procedures,
(d) Guide and train Draughtsman in theory and	

practice of Naval Architecture discipline. (e) Scrutinize officers/quotations/specifications/drawings received from outside agencies. (f) Prepare and maintain progress reports/charts for all projects. (g) Responsible for safe custody of all BRs, documents, instruments, stationary, drawing and other data pertaining to hull engineering and electrical instruments. (h) Extract, obtain, classify and collage hull design/construction, equipment data and to maintain all details of manufactures and equipment. (i) Scrutinize quotations/specifications submitted by ship builders.	documents, Calculations policies, Rules and Regulations applicable for indigenization of stores. (c) Be generally familiar with the activities/developments in other section/inspectorate regarding armaments. (d) Ensure availability of all documents, instructions required for quality assurance of NA stores pertaining to IFPT. (e) Responsible for command, control and administration of all staff placed under him. (f) To ensure expeditious correct identification of material and preparation of drawing/paper particulars of NA stores required to be indigenized. (g) Ensure to keep an updated record of items pending indigenization/completed as per the priorities allocated. He would be responsible for the correctness of the
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	information and availability of sufficient number of drawing/paper particulars required for manufacture/fabrication of the items indigenously at all times. (h) For safe custody, repair AMC, demand procurement of drawing office equipments had stationary and efficient functioning of indigenization cell at NAI (K) including CAD/CAM system. (i) He is to satisfy himself about the correctness/otherwise of drawing/paper particulars including dimensional/material check, fitment and functioning trails of pilot as well as associate himself with such trails. (j) Responsibilities for conducting local proof of all NA stores in NA(K), NAI(T) in accordance with relevant and stipulated instruction/conditions on as
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	and required basis. (k) Safety of men and material during all stages of proof. (l) Necessary liaison with concerned outside agencies in case the proof is required to be carried out by any such agency. (m) To ensure timely rendition of proof results to all concerned. (n) Responsible for undertaking failure investigation of all NA stores expeditiously. (iii) To correct observation, analysis and rendering report on performance of these stores. (iv) To recommend necessary corrective measures to the extent possible.
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14. It was pleaded that there are various parameters to determine equality in the two posts and that the claimants

before the Tribunal have not shown the equality required by law.

15. It may be noted that the petitioner did not dispute that in the past both posts were in the same scale and that persons holding the post of JDO supervise the work of senior Foreman which post also is in the same scale of pay as that of JDO.

16. Allowing the claim of the respondents, vide its order dated 8.6.2007 the Tribunal has held as under:-

“13. The arguments as noted in the foregoing paragraphs show overwhelming parity between the JDOs and CTO (Design) till the 4th Pay Commission. It is only in the 5th Pay Commission that differentiation in the pay scales has been made by giving higher pay scale to CTO (Design)..... What is important to note is that the essential educational and other qualifications in case of JDOs are slightly higher than in case of CTO (design). The feeder posts in JDO (Electrical/ Engineering/ Construction) and CTO (Design) have all through the same scales of pay as seen from the table in paragraph 2 above.

x x x x

14. We have seen that the Naval Headquarters as well as the Ministry of Defence have made a very strong plea for upgrading the pay scales of JDOs to that of CTO (Design) on the ground that the functions performed by them are essentially identical and complimentary. It is not correct to state that these notings have given any cause of action to the Applicants. These notings have only been cited in support of their argument for parity, which task these notings have performed to a great extent. We feel that reliance of M.D., U.P. Land Development Corporation (supra) is misplaced because the facts in the case before the Hon'ble Supreme Court were entirely different from the facts of the instant case.

15. **This is a case in which, considering all aspect, there is a hostile discrimination against the JDO cadre vis-à-vis CTO (Design).** Therefore, considering the ratio laid down by the Hon'ble Supreme Court in P.V.Hariharan's case (supra), we are justified in stepping in and interfering with the decision, or the lack of it, of the Government. Reliance is placed on **Randhir Singh Vs. Union of India & Ors.**, (1982) 1 SCC 618 in which the Hon'ble Supreme Court has held as follows:

“.....where all things are equal i.e. where all the relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different department.”

16. On the basis of above consideration, we quash the impugned order dated 07.04.2006 and direct the Respondents to grant to the Applicants the pay scale of Rs.7500-12000/- at par with Group 'B' gazette post of Civilian Technical Officer (Design) from the same date as it has been given to the Group 'B' gazette post with all consequential benefits. This should be done within four months from the date of receipt of a copy of this order. No costs.”

17. At the outset it is pertinent to mention here that though the learned Tribunal has noted the fact of a comparative analysis of the duties and responsibilities of the JDO and CTO being placed on record by the respondent but has failed to deal with the same.

18. Before proceeding to decide upon the claims, we discuss the law on the principle of “equal pay for equal work”.

19. Equal pay for equal work means persons doing identical work under the same employer are not to be treated differently in relation to their pay.

20. In the decision reported as 1987 (Supp) SC 257 Inder Singh & Ors. Vs. Vyas Muni Mishra & Ors. the Supreme Court held that when two groups of persons are in the same or

similar posts, performing same kind of work, either in the same or in the different departments, the Court may in suitable cases direct equal pay by way of removing unreasonable discrimination and require the two groups, similarly situated, to be treated equally.

21. In the decision reported as 2009 (13) SCC 635 State of M.P. & Ors. Vs. Ramesh Chandra Bajpai, the Supreme court has dealt with the jurisprudence relating to the concept of the “equal pay for equal work” and citing various precedents on the said propositions has laid down the following principles:-

- (i) That the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. In other words the equality clause can be invoked in the matter of pay scales only when there is ‘*wholesale identity*’ between the holders of two posts.
- (ii) In determining whether two posts are similarly placed or there is ‘*wholesale identity*’ between the two, the Court has to consider the factors like the source and mode of recruitment/appointment to the posts, qualifications required, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality and functional need, etc.
- (iii) Equal pay for equal work carries with it a positive concept of equality and cannot be invoked for perpetuating illegality i.e. an illegal or wrong order passed in one case cannot be made the basis for compelling a public authority to pass similar order in other cases.

- (iv) The doctrine of equal pay for equal work does not contemplate that only because the nature of work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations, the said doctrine would be automatically applied.

22. In yet another decision of the Supreme Court reported as 2009 (9) SCC 514 State of Punjab and Another vs Surjit Singh and Others as many as 31 precedents have been summarized. The principles culled out in the said decision are in consonance with the law laid down in Ramesh Chandra Bajpai's case (Supra) and are noted as under:-

- (I) Further clarifying the law and re-iterating the concept of wholesale identity, it was held that the principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comparing and evaluating the work of different persons in different organizations or even in the same organization. This is a concept which requires for its applicability, complete and wholesale identity between a group of employees claiming identical pay-scales and the other group of employees who have already earned such pay-scales. It has been held that the problem about equal pay cannot be translated into a "mathematical formula".
- (II) To claim a relief on basis of equality, it is for the claimant to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination.

(III) 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' required 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.

23. It is apparent that on what principles equality has to be determined cannot be put in a water tight compartment. But some of the factors to be noted are:

- a) Source and mode of recruitment/appointment.
- b) Educational and other qualifications required.
- c) Nature of work.
- d) Value of work.
- e) Responsibilities involved.
- f) Reliability.
- g) Prior experience and expertise.
- h) Confidentiality and functional needs.

24. It can thus safely be said that the aforesaid 8 guiding principles need to be kept in mind and any other which may be relevant on the facts and circumstances of each case has also to be taken note of.

25. In the backdrop aforesaid, it may be highlighted that the educational qualification for both posts is a graduation degree. For the post of JDO the degree is a Naval Architecture and for CTO the degree could be in Mechanical or Electrical Engineering. This is for direct recruits. For promotion, a Chief Draughtsman is eligible for promotion to both the posts with a difference of qualifying service being two years in regular service as a Chief Draughtsman for the post of JDO and three years for CTO. Thus, there is parity in the two posts qua the source and mode of recruitment and the educational qualifications.

26. Qua the issue of nature of work, value of work, responsibilities involved and reliability, suffice would it be to state that the two cannot be compared as objects, for the reason one set of persons are in the armament discipline and the other in the engineering discipline. Just as a teacher teaching Physics cannot be compared with a teacher teaching Chemistry with reference to the subjects taught, similarly would be position in the instant case. But, difference in scale of pay to a teacher teaching Physics and to a teacher teaching Chemistry cannot be simply justified by saying that the two disciplines cannot be compared.

27. This is the problem with the chart of duties on which the petitioner seeks to justify the difference in the work.

28. The test is to see the equality of work by applying the qualitative and the quantitative test. Just as a teacher of Physics would require a degree in Physics, the teacher of

Chemistry would require a degree in Chemistry. Thus, qualitatively as well as quantitatively it can safely be said that both are similarly situated. If a Physics teacher is required to take 20 lectures a month, conduct 5 practical classes and take 2 tutorials and the same being for the Chemistry teacher and if both of them are teaching undergraduates, by contrasting what the Physics teacher teaches and what the Chemistry teacher teaches, would be the wrong way to solve the problem.

29. If we compare the duties of the two posts we find that both JDO and CTO supervise the work of the drawing staff under them as also guide them. Both of them help in the identification of material and preparation of the requisite drawings and prepare and maintain progress reports for the projects. In their respective disciplines, both certainly discharge services which are qualitatively and quantitatively near identical and if not identical.

30. Now, it is next to impossible to return findings of qualitative and quantitative identity with 100% precision.

31. We wonder as to wherefrom and on what principle a difference of Rs.50/- in the scale of pay has been worked upon. As noted above the post of CTO has been placed in the scale of Rs.7500-12,000/- and that of JDO in the scale of Rs.7450-11,500/-.

32. Since the inception of the cadre and till the recommendations of the 5th Pay Commission were enforced, both posts were in the same scale of pay and it is not the case of the petitioner that a wrong had been committed in the past which required to be undone vis-à-vis the post of CTO.

33. The twin reason of there being parity in the scale of pay in the past which now has been violated in sum of Rs.50/-

only for which marginal difference no reasons are forthcoming, one is led to the conclusion that an insidious discrimination has ensued.

34. One fact needs to be highlighted, being that persons holding the post of JDO are required to supervise the work of Senior Foremen which post is also in the scale of Rs.7450-11,500/- which has resulted in disturbing the vertical relativity between the two posts.

35. Giving the aforesaid additional reasons, we concur with the conclusion arrived at by the Tribunal and hence dismiss the writ petition but make no order as to cost.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

AUGUST 02, 2010
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