

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

+ **W.P.(C) No.4033/2001**

% **Date of Decision: 30.05. 2011**

Union of India & Anr. Petitioners

Through Mr.R.V.Sinha Advocate and Mr.
A.S.Singh, Advocates.

Versus

Sh.Ram Kumar & Ors. Respondents

Through Mr.Rajat Aneja, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS.JUSTICE VEENA BIRBAL

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioners have challenged the common order dated 8th November, 2000 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1003, 1004, 1005 and 1007 of 2000, titled as 'Sh. Ram Kumar & Ors. v. Union of India & Ors.', allowing the original applications (OAs) of the respondents and granting the revised pay scale of Rs.5000-8000 from 1.1.1996 with all consequential benefits. All the OAs had dealt with identical

grievances. Therefore, they were clubbed together and a common order was passed.

2. The brief facts to comprehend the disputes between the parties are that the Directorate of Coordination Police Wireless ("DCPW") is an apex body for Police telecommunication in India constituted under Ministry of Home Affairs, which plans, coordinates, trains, evaluates and implements the modernization of police telecommunication in the country. The entry level in the technical stream in the office of the DCPW is Radio Technician. There are two categories of Radio Technicians- Diploma Holders and Non Diploma Holders. The difference in the pay scale of both the categories of Radio Technicians had been recognized up until the Fourth Pay Commission. The Fourth Pay Commission placed the Diploma Holders and the Non Diploma Holders in the pay scale of 1400-2300/- and 1350-2200/- respectively. The notification of the 5th Pay Commission came into being on 30.11.1997. While implementing the recommendations of the 5th Pay Commission, the petitioners gave the pay scale of Rs. 4500-7000/- to Diploma Holders as well as to Non Diploma Holders Radio Technicians. The respondents contended before the Tribunal that the 5th Pay Commission has identified a different pay scale for Technicians who are holding either a Degree in Science or a Diploma in Engineering and as such they were entitled

to the pay scale of Rs. 5000-8000/- in terms of the recommendations of the 5th Pay Commission in Para 50.23 and Para 50.24, however, the petitioners herein had placed the respondents in the pay scale of Rs. 4500-7000/- along with the Non Diploma Holders, thereby ignoring the fact that the respondents are Diploma Holders and that there is always a distinction recognized by the Pay Commission. As per the respondents the 5th Pay Commission also made that distinction, which has been recognized and maintained as per the recommendations in Para 50.23 and 50.24 pay commission recommendations. The relevant portion of Para 50.23 and 50.24 of the 5th Pay Commission Report is enumerated herein below:

“50.23. We have carefully considered the demands of the Federation and the views of the Administrative Ministries/ Departments in the light of our General approach on the pay scales of different professional/ technical groups of staff and existing relativities between technical and non technical categories. We have, as a general rule, decided to improve the initial recruitment pay scale of diploma engineers in Government. We accordingly, recommended following pay structure for engineering subordinate cadres:-

Existing Rs.	Proposed (in present terms) Rs.
1400-2300	1600-2660
1600-2660*	1640-2900
1640-2900*	1640-2900
2000-3200*	2000-3500
2000-3500	2000-3500
2375-3500	2375-3750

2375-3750

2500-4000

*some of these are graduates in engineering, others are diploma holders;

50.24. These pay scales will apply mutatis- mutandis for diploma engineers in different cadres depending upon the availability of specific existing pay scales. We have also recommended specific pay structure for different engineering cadres;”

The respondents also contended that they have always been placed in the higher scale over the Non Diploma Holders as they possess a diploma in Engineering (3 years). In the office of the petitioners as well as in other offices of Government of India persons possessing Diploma in Engineering have been placed in a different pay scale over the Non Diploma Holders. They further relied upon Para 52.111 of the recommendations of the Fifth Pay Commission which has approved the replacement scale of Rs 5000-150-8000/- with regard to Technician with either a degree in Science or Diploma in Engineering. The relevant portion is reproduced here:

“We also recommend that the other Technicians entering service with either a Degree in Science or Diploma in Engineering should be upgraded to the scale of pay of Rs.1600-2660 with Assured Career Progression on a dynamic basis to the levels of Rs.1640-2900 and Rs 2000-3500, respectively.”

3. The plea of the respondents was contested by the petitioners before the Tribunal, contending *inter-alia*, that till the 4th Pay

Commission the Diploma Holders Radio Technicians received higher pay scales than Non Diploma Holders, i.e., 1400-2300/- and 1350-2200/- respectively. However, the 5th Pay Commission merged both the pay scales to Rs 4500-7000/-. The 5th Pay Commission did not give any specific recommendation for Diploma Holders and Non Diploma Holders in the office of DCPW. It was also contended that the recommendations of the 5th Pay Commission vide Para 50.23 and 50.24 were meant for “Subordinate Engineering Cadres” and Para 70.107 till 70.110 dealt specifically with the petitioner DCPW’s establishment in which the respondents are working. It has discussed about the functions, the hierarchy and issues about the office of DCPW but nothing is mentioned about the pay scales of Radio Technicians. The petitioners submitted that the recommendation at para 52.111 also does not cover the case of the respondents, since Para 52.111 has recommended the pay scale of Rs 5000-8000/- in respect of the “Medical and Para Medical Services” and the scales are allowed for the “EMG, EEG and Audiometry Technicians” for Safdarjung Hospital, New Delhi; Dr R.M.L.Hospital, New Delhi & JIPMER but not for the post of “Radio Technicians”. It was further pointed out that in the office of DCPW no such posts are existing. Therefore it would not be justifiable to cite the example of this case in respect of “Technician” in the Medical and Para Medical Services. In fact, the office of the DCPW, petitioner no.

2 is bound by the instructions issued by the Ministry of Finance, Department of Expenditure vide its notification dated 30.11.1997. In the said notification replacement of pay scales have been shown in Part 'A' for all the Central Govt. offices and in Part 'B' different replacement scales have been given for common category of posts and for some particular posts in certain offices. Since there is no mention of office of DCPW in Part 'B', it was urged that the respondents' claim should be examined as per the First Schedule Part 'A' attached to the recommendations of the Fifth Pay Commission. Based on the schedule, the office of petitioner no.2, i.e., DCPW, has placed both the Diploma Holders and Non Diploma Holders Radio Technicians in the identical replacement scale of 4500-7000/-. It was further submitted that the matter being a policy decision taken by the Govt. of India, the office of DCPW had no role to play while replacing the pay scales of the Radio Technicians.

4. The Ld. Tribunal vide the order dated 8th November, 2000 observed that the recommendations made in paragraph 50.23 relates to the persons working in all the Administrative Ministries/ Departments and in the light of the Commission's general approach they have revised the pay scales of Diploma Holders from 1400-2300 to Rs.1600-2660. In para 50.24 the Commission has specifically mentioned that the aforesaid scale will apply *mutatis mutandis* to

diploma engineers in different cadres. Further it was noted by the Tribunal that the Para 70.107-70.110 as pointed out by the learned counsel for the petitioners herein does deal with the office of DCPW and does not make any recommendations for Diploma Holder Engineers. Regarding the First Schedule Part 'A' as relied by the learned counsel for the petitioners, the schedule happens to be a running statement of existing pay scales merged to provide for revised pay scales as a general rule. This does not relate to specific jobs and services as such and therefore, is not relevant. Thus denying the contentions of the petitioners herein the Tribunal held only Para 50.23 and 50.24 to be relevant. As in these paras the Commission has made clear provisions for grant of the pay scale of Rs. 5000-8000/- (pre revised Rs.1600-2600/-) to Diploma Holder Engineers across the board, the Tribunal allowed the OAs and directed the petitioners to grant the respondents the revised pay scale of Rs 5000-8000/- with effect from 1.1.1996 with all consequential benefits.

5. The review applications and miscellaneous applications filed by the petitioners were rejected. The Tribunal held that in the review applications filed by the petitioners, they have tried to re argue the case by re-agitating the same issues which they had raised in the OAs and since the Tribunal did not find any apparent error on the

face of the record, the RAs were rejected. With respect to the MAs, the Tribunal held that the petitioners are blowing hot and cold at the same time. On the one hand, a prayer was made for time to implement the order and on the other hand, a prayer was made for the stay of the order dated 8th November, 2000 in order to enable them to approach the High Court to impugn the said order of the Tribunal. Thus the Tribunal held that no case is made out on either of the counts and rejected the MAs with the liberty to approach the High Court, to the petitioners.

6. Aggrieved by the order of the Tribunal dated 8th November, 2000, the petitioners have filed the present writ petition. The petitioners have reiterated their contentions as were raised before the Tribunal. The petitioners state that the 5th Pay Commission merged both the pay scales of Diploma Holders and Non Diploma Holders to Rs 4500-7000/-. The 5th Pay Commission did not give any specific recommendation for Diploma Holders and Non Diploma Holders in the office of DCPW. The recommendations of the 5th Pay Commission vide Para 50.23 and 50.24 are meant for “Subordinate Engineering Cadres”. As per the Recruitment Rules of DCPW the minimum entry level qualification of Radio Technicians is Matric with I.T.I Certificate while as incumbents of Subordinate Engineering Cadres and the departments classified under Subordinate Engineering Cadres have

been specified in the Commission's Report, it does not include the petitioner no. 2's establishment. The incumbents of Subordinate Engineering Cadres, say junior Engineers in Central Public Works Department ("CPWD"), are required to have minimum qualification of Diploma in Civil/ Electrical/ Mechanical Engineering. Therefore, the Diploma Engineers of Subordinate Engineering Cadres cannot be equated or compared with the Diploma Holder Radio Technicians of DCPW since the required minimum qualification is only Matric with I.T.I Certificate. To add to that, it may be noted that the next promotion post of Junior Engineers of CPWD is Assistant Engineer which is a Gazetted Post whereas in the DCPW, a Diploma Holder as well as Non Diploma Holder Radio Technician is first promoted to the grades of Technical Assistant (Maintenance)/ Technical Assistant, then to the post of Communication Assistant (abolished w.e.f. 15.9.2000), then Senior Technical Assistant and then Extra Assistant Director, which is a Grade 'B' Gazetted Post in the pay scale of Rs. 6500-10500/-.

7. The petitioners have relied upon State of Punjab & Anr. Vs. Surjit Singh & Ors., 2009 (11) SCALE 149 where it was held that the principle of equal pay for equal work can only apply if there is complete and wholesale identity between the two groups. Even if the employees in the two groups are doing identical work they cannot be

granted equal pay if there is no complete and wholesale identity e.g. a daily-rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of jobs, responsibilities, experience, method of recruitment, etc. are different. It is now well known that the equality clause contained in Article 14 should be invoked only where the parties are similarly situated and where orders passed in their favor is legal and not illegal. It has a positive concept. It was held in this case that the interest of justice would be sub-served if the State is directed to examine the cases of the respondents herein by appointing an Expert Committee.

8. The petitioners further relied upon State of Madhya Pradesh & Ors. Vs. Ramesh Chandra Bajpai, 2009 (11) SCALE 619. The core question which arose for consideration was whether the respondent who was working as Physical Training Instructor in Government Ayurvedic College was entitled to claim parity of pay with the teachers who had been granted UGC scale of pay. It was held that it is well settled 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. The Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. 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. The Court also relied on *Government of West Bengal v. Tarun Kumar Roy* MANU/SC/0945/2003: 2004 (1) SCC 347 where it was opined that in a case where the employees do not hold essential educational qualifications, they cannot claim parity in the scale of pay on the ground of equality, and held as under:

“14. Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the 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. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently.

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30. The respondents are merely graduates in science. They do not have the requisite technical qualification. Only because they are graduates, they cannot, in our opinion, claim equality with the holders of diploma in Engineering. If any relief is granted by this Court to the respondents on the aforementioned, ground, the same will be in contravention of the statutory rules. It is trite that this Court even in exercise of its jurisdiction under Article 142 of the Constitution of India

would not ordinarily grant such a relief which would be in violation of a statutory provision.”

It has been held by the Supreme Court that only because the nature of work is same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply.

9. The petitioner’s counsel submitted that the relevant paragraphs in case of the respondents are Para 70.107 till 70.110 of the recommendations of the 5th Pay Commission which deal with the petitioner DCPW’s establishment in which the respondents are working. It has discussed about the functions, the hierarchy and issues about the office of DCPW but nothing is mentioned about the pay scales of Radio Technicians. The petitioners categorically asserted that 5th Central Pay Commission did not give any specific recommendation about any Group B, C or D posts in the Office of the Directorate of Coordination Police Wireless, therefore, the pay scale of all the posts had been replaced by the standard pay scale defined by the 5th Central Pay Commission. The petitioners further submit that this becomes crystal clear from the fact that the Pay Commission did not agree for the pay scale of Rs.2200-4000/- (pre revised) in respect of Extra Assistant Director, which is the promotion post in the hierarchy of Radio Technician. Instead the Pay

Commission recommended the scale of Rs. 2000-3500/- to the Extra Assistant Director. Pay Commission also did not agree for the scale of Rs.2200-4000/- as the method of recruitment for this post is not through Combined Engineering Services Examination. The petitioners contended that the recommendation at para 52.111 also does not cover the case of the respondents. The Ld. Counsel for the petitioners states that petitioner no. 2 is bound by the instructions issued by the Ministry of Finance, Department of Expenditure vide its notification dated 30.11.1997. In the said notification replacement of pay scales have been shown in Part 'A' for all the Central Govt. offices, the respondents' claim should be examined as per the First Schedule Part 'A' attached to the recommendations of the Fifth Pay Commission. Based on the schedule, the office of petitioner no.2,i.e., DCPW, has placed both the Diploma Holders and Non Diploma Holders Radio Technicians in the identical replacement scale of Rs. 4500-7000/-.

10. The petitioners' next contention is that the Tribunal failed to appreciate that the pay scale of Technical Assistant (Maintenance)/ Technical Assistant (next promotion post) is Rs.4500-7000. This will undoubtedly lead to an anomaly, since the scale of the feeder cadre i.e. Radio Technician would be Rs. 5000-8000/- and the scale of next promotion post i.e. Technical Assistant (Maintenance)/ Technical

Assistant would be lower i.e., Rs 4500-7000/-. The petitioners' counsel stated that the pay commission recommended Rs 4500-7000 pay scale for Radio Technicians of the Office of the DCPW. The Tribunal could not take over the function of the Pay Commission and revise the scale to Rs.5000-8000/-.

11. This Court has heard the learned counsel for the parties in detail and have also perused the record. It is indeed for the Tribunal to consider whether the action of the State is arbitrary or not or whether the pay scale has been fixed in accordance with law or not. Every state action has to be founded on valid reason. A state action which is unreasonable and arbitrary strikes at the very root of Article 14 of the Constitution of India, then the Tribunal is entitled to review the decision of the State. It is admitted that before implementation of the 5th Pay Commission, the Diploma Holder Radio Technicians were in the pay scale of Rs 1400-2300/- and the petitioners adopted the replacement pay scale of all categories under First Schedule part A of notification of Government of India dated 30.9.1997 by which the pay scale of Diploma Holder Radio Technician had been revised to Rs.4500-7000/-. It is also admitted that thereafter w.e.f. 8.1.2002 the pay scale of the respondents has been revised by notification dated 8.1.2002 and they have been given pay scale of Rs.5000-8000/- from Rs.4500-7000/- on the restructuring of Group B and C

posts in operational and technical wings of DCPW. The question before us is therefore restricted to whether the respondents are covered by recommendation given in Para 50.23 and 50.24 as is held by the Tribunal.

12. It cannot be disputed that the recommendations made in paragraph 50.23 relates to the persons working in the Subordinate Engineering Cadre in different Ministries/ Departments and that it does not specifically deal with the respondents. However in the light of the Commission's recommendation in para 50.24 wherein the Commission has specifically mentioned that the pay scale specified in 50.23 will apply mutatis mutandis to diploma engineers in different cadres, the claim of the respondents has been dealt with, and therefore it is justified. For the sake of clarity the relevant para 50.24 is reproduced as under:

“These pay scales will apply mutatis-mutandis for diploma engineers in different cadres depending upon the availability of specific existing pay scales. We have also recommended specific pay structure for different engineering cadres.”

13. Therefore the contention of the petitioners that Para 50.24 does not apply to the respondents since it deals with Sub-ordinate Engineering Cadres in the ministries specifically mentioned therein, cannot be accepted. If that was the case then after recommending

the pay scale in Para 50.23 which undoubtedly applies to “Sub-ordinate Engineering Cadre” there was no need for the Commission to specifically mention the fact that this pay scale would apply mutatis-mutandis to diploma engineers in different cadre. In addition in Para 50.23 the Commission is also categorical in mentioning that it has, as a general rule, decided to improve the initial recruitment pay scale of diploma engineers in the government.. A perusal of the 5th Central Pay Commission’s Report also reveals the intention of the Commission while dealing with the aspect of ‘Equal Pay For Equal Work’, specifically in Para. 40.17 which deals with the aspect qualification based pay scales. Para 40.17 is reproduced as under:

“We are suggesting in a later chapter that there should be a permanent pay body, so that it can keep on studying the parameters of different jobs and develop more objective criteria for job evaluation than are available at present. Although it is not very scientific or conclusive, **we felt that as a preliminary step towards rationalization, the entry qualification could provide a fairly reliable clue. It will be noticed that we have attempted a broad rationalization of pay scales across cadres and departments, depending on whether the entry qualification is middle pass, matriculation, 10+2, matriculation with ITI Certificate, 10+2 with a two year diploma, 10+2 with a three year diploma, an ordinary degree, a degree in agriculture, horticulture, law, engineering, etc. or a post graduate degree. The results may not be perfect, but one can have some justification that atleast the educational qualifications have been recognized.**”

14. Therefore, it has been rightly held by the Tribunal that the Commission clearly made provisions for grant of the pay scale of Rs.5000-8000/- (pre-revised Rs.1600-2660) to Diploma Holder Engineers across the Board. As the notification of the 5th Pay Commission came into being on 30.11.1997, the respondents shall be granted the pay scale of Rs.5000-8000/- w.e.f. 1.1.1996 in pursuance of the Commission's Recommendations in para 50.23 and 50.24.

15. For the foregoing reasons we do not find any such illegality or perversity in the order dated 8th November, 2000 passed in original applications No.1003, 1004, 1005 & 1007 of 2000 titled "Sh. Ram Kumar & Ors. v. Union of India & Anr." which would require any interference by this Court, by exercising its power under Article 226 of the Constitution of India. Thus the writ petition is dismissed and the order of Tribunal granting the revised pay scale of Rs 5000-8000 with effect from 1.1.1996 with all consequential benefits is upheld. The parties in the facts and circumstances are left to bear their own cost.

ANIL KUMAR, J.

May 30, 2011
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VEENA BIRBAL, J.