

\*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

[W.P. (C) 7157 OF 2000]

%

RESERVED ON: 14.07.2011  
PRONOUNCED ON:12.08.2011

GOVT. OF NCT OF DELHI & ORS.

. . . PETITIONERS

Through: Ms. Avnish Ahlawat, Advocate  
with Ms. Latika Chaudhary,  
Advocate.

VERSUS

MUKESH PRAKASH & ORS.

. . .RESPONDENTS

Through: Mr. N.D. Kaushik, Advocate with  
Mr. Arun Bhardwaj, Advocate.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Petitioners in this case include the Govt. of NCT of Delhi as well as the Chief Fire Officer (hereinafter referred to as the Government). There are 35 respondents who are the members of Delhi Fire Service under the Government. Before this service was

constituted, the Department of Fire Services was part of Municipal Corporation of Delhi (MCD) and these respondents joined their duties initially with MCD. With the bifurcation of Delhi Fire Service from MCD, these respondents became the employees of Delhi Fire Service. These respondents at the material time was working as Radio Telephone Operators (RTO) and were given pay scale of Rs. 330-480 (pre-revised) and had filed O.A. before the Central Administrative Tribunal (CAT) seeking pay parity with Radio Operators (RO) who were placed in the higher pay scales of Rs. 380-560 (pre-revised). The Tribunal had allowed the said O.A. of the respondents vide impugned orders dated 6<sup>th</sup> October, 1999. Challenging that order, the present writ petition is preferred invoking the provisions of Article 226 of the Constitution of India by the Government. The genesis of dispute lies in the following facts:-

Way back in 1970-71 the respondents had created posts of R.Os. to tackle day to day administrative problems of Delhi Fire Service. R.Os. were recruited with the qualification of matriculates. This was required to be added with two examinations of Grade I and Grade II stipulated by the Ministry of Home Affairs for the purpose of functioning as R.Os. Some of the applicants were initially appointed directly as Telephone Operators (TO) through

open competition. Others were appointed directly as RTOs after 1984. The respondents in an attempt to modernize Delhi Fire Services, created 96 new posts of R.T.Os. in 1983-84. While operating these new posts, the respondents also took initiative of converting as many as 26 posts of T.Os. as R.T.Os. Prior to this conversion, the Telephone Operators were in the pay scale of Rs.200-400. Recruitment Rules for the post of R.T.Os were framed prescribing the pay scale of ₹ 330-480. The respondents were appointed as R.T.Os after the creation of new posts in 1984. As mentioned above, some of the respondents were appointed as Telephone Operators in the pay scale of 260-400 and after these posts were converted into RTOs, they were given the pay scale of ₹ 330-480. Some other respondents were appointed directly as RTOs pursuant to the advertisement issued by the Government in this behalf and through open selection offering them the pay scale of ₹ 330-480 as per the Recruitment Rules.

2. The pay scale of the Radio operators was ₹ 380-560. These respondents claimed that they were discharging the same duties as that of the Radio Operators and, therefore, should have been placed in the aforesaid pay scale of ₹ 380-560. This claim was also predicated on the premise that the essential qualification for appointment to the post of Radio Operator was the same as that

of RTOs. Since the Government did not accede to their request, they filed the aforesaid O.A. The Government contested the claim of the respondents submitting that as per the scheme in the recruitment regulation for the post of ROs, the respondents did not fit in the same because of non-fulfillment of essential qualifications therefore, they could not be treated as par with the incumbents with the post of Radio Operators. It was also submitted that these respondents were given the pay scale of Rs. 330-480 which was prescribed in the Recruitment Rules and the selection was made on that basis. The respondents, therefore, could not be given the higher pay scale.

3. The Tribunal did not accept the aforesaid explanation of the Government. According to it all the condition of claiming pay parity were satisfied namely identical method of recruitment, educational qualification, nature of duties etc. The discussion is summed up by the Tribunal in para 7 of its impugned order which reads as under:-

“Based on the above criteria, we do not find any reasons to differentiate the applicants from ROs in respects of the duties in responsibilities, educational qualifications etc. It is not in dispute that as per provisions of the recruitment rules. As that annexure ‘O’ and annexure A-5 on R.T.Os passing grade II wireless Operators examination as stipulated

by the Ministry of Home Affairs, could be at par with the ROs. In respect of necessary and desirable qualifications. It is also not in dispute that the R.T.Os are eligible for the training and some of them had already gone through that process. It is also not in dispute that the respondents have of their own orders dated 1.9.1984 converted T.O. circulated in a court's order 25.1.59 into R.T.Os and that the jobs between R.Os and R.T.Os are interchangeable. When all the other conditions of service are identical, the similarly placed persons cannot be discriminated only in respect of pay scale. We find that the case of the applicant herein, on all fours, are identical to those of the employees of State Insurance Corporation who had filed OA No. 981/94 decided by this Tribunal on 17.3.1999. In that case, the applicants were denied the scale of pay of Rs 1640-2900 given to "Assistants/Stenographers Grade 'C' in the Central Secretariat Service.

In this case, the applicants were denied the pay parity although all the conditions were fulfilled and there was blatant act of discrimination. The OA was allowed by this Tribunal. The Union of India (DGEIS) took up the matter to the Hon'ble High Court of Delhi who, in turn vide order dated 07-07-1999 refused to stay our orders. A SLP (C.11642/99) against the orders of the Hon'ble High Court of Delhi was filed by the Government of India and the same was dismissed by the Hon'ble Apex Court on 23.8.1999. We find that the same circumstances as in OA 981/94 prevail herein as well. We also find that the appellants' case gets well covered by the decision of this tribunal in P.K. Sehtal's case (supra)".

4. During the arguments, the learned counsel for the respondent had pointed out that the judgment of the Tribunal had already been implemented in toto and pay scale was brought at par with RTOs and even arrears from 1<sup>st</sup> September, 1994 to 31<sup>st</sup> December, 1995 were paid. He thus submitted that as the respondents were enjoying the pay scale in terms of the orders of the Tribunal which was further revised on the commendations of the 5<sup>th</sup> Pay Commission, it would be too unfair or improper to put them back in the lower pay scale after a period of 16 years. More so, when 16 out of 35 respondents had either retired or expired and remaining respondents are due to retire in near future.

5. We find force in the aforesaid submission of the respondents. The impugned order was passed by the Tribunal on 6<sup>th</sup> October, 1999. The Tribunal had traced the history of the service and ultimately concluded that the pay scale given to these RTOs was lower than that of ROs and the educational qualification, method of recruitment, duties of the two posts etc. are almost identical.

6. No doubt, the pay parity is an administrative function and it is for the executive to look into these aspects. However, when the respondents have been granted this pay scales of ₹ 380-560 (pre-revised) w.e.f. 1<sup>st</sup> September, 1994 and 27 years have

passed since then, it may not be proper to exercise discretion under Article 226 of the Constitution of India in exercise of extraordinary writ jurisdiction and interfere with the direction of the Tribunal which implemented long ago.

7. This writ petition is accordingly dismissed.

(A.K. SIKRI)  
JUDGE

(M.L. MEHTA)  
JUDGE

AUGUST 12,2011  
skb