

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

+ W.P. (C) NO. 1935-36/2006

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Reserved on: 19th July, 2012

Decided on: 24th July, 2012

KISHAN LAL SAROYA AND ANR

..... Petitioners

Through: Mr. N.S. Dalal, Mr. D.P. Singh and
Mr. Aditya Bhadoo, Advocates.

versus

THE P.O., IND. TRIBUNAL, THE MGMT

..... Respondents

Through: Mr. Jayant Nath, Sr. Advocate with
Mr. Udit Gupta, Advocate for
Respondent No. 2.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petitions the Petitioner No. 1 and Petitioner No. 2 son of deceased Satpal Singh assail the award dated 4th February, 2003 whereby it was held that the Petitioners were not entitled to the scale of Rs. 910-1700 on obtaining four approvals and thus not entitled to any relief.

2. Learned counsel for the Petitioners contends that the Respondents have violated the salutary principles of equal pay for equal work by not giving pay scale at par with one Mr. P.P. Kapoor who had been placed in the pay scale of Rs. 2005-2965/- after obtaining four approvals. The workmen have discharged their onus by proving that their work was similar and identical to that of Shri P.P. Kapoor and they all had got four approvals from the Directorate General Civil Aviation (DGCA). According to the workmen they were not demanding promotion and were simply demanding scale of Rs. 2005-2965/- and thus the contention of the Management and the finding

of the learned Industrial Tribunal that they could not be given higher pay scale for want of vacancies is illegal and unjustified. The Petitioners/workmen filed detailed written submissions however, no grounds taken therein were considered and the main award was passed ignoring the facts and law stated in the written submissions. It is contended that the stand of the Management is that promotion to higher pay scale/grades are effected to all categories of employees including Aircraft Technicians (Welders) subject to the eligibility for the relevant post and availability of vacancies as also the employees being found suitable for the promotion by a duly constituted Selection Board. As a matter of fact MW1 Mr. V. S. Raghwan in his cross-examination has admitted that work of all categories of technical designations are common but the grades are different depending upon the pay scale. The Management has not denied that the work and the working hours of the persons with whom the workmen were claiming parity were same. Though the designation and pay scale were different but basically the work and the working hours of the Master Technician, Senior Aircraft Technicians and Aircraft Technicians are same, similar and identical in nature. It is alleged that the Management has discriminated the workmen by not awarding the pay scale of Rs. 910 -1,700 (revised to Rs. 2005-2965). Further no cross-examination of the workmen was conducted on the point that the work and the working hours of the Foreman, Charge-Hand, Master Technician, Senior Aircraft Technician and Aircraft Technicians were similar or identical in nature. Reliance is placed on *U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd. U.P. vs. Its workmen, JT 1989 (4) SC 181* to contend that allowing higher pay scale to employees of some trades from an earlier date and giving the same benefit to the members of the other trades in

the skilled grade from a later date was per-se discriminatory and contradictory to the equity clause envisaged in Article 14 and 16 of the Constitution as well as the Fundamental Right of equal pay for equal work.

3. Learned counsel for Respondent on the other hand contends that the workmen are claiming higher pay scale which is available on a promotional post. Since no vacancy existed, the workmen could not be promoted and thus higher pay scale could not be given. According to the learned counsel for the Respondent the reference itself was bad in the sense that it did not say anything about the promotion but only sought parity on the pay scale. It is contended that the grant of pay scale is an administrative action and the Courts cannot adjudicate upon the same. Reliance in this regard is placed on *State of West Bengal and another vs. West Bengal Minimum Wages Inspectors Association and others*, 2010 (5) SCC 255. It is contended that there is no infirmity in the impugned award as the workmen cannot not claim parity with the pay scale of the promotional post. The principle 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 value. The principle of equal pay for equal work has no mechanical application in every case. Article 14 of the Constitution permits reasonable classification based on qualities or characteristics of persons recruited and grouped together as against those who are left out. Though the quality and the characteristics must have reasonable relation to the object sought to be achieved but merely designating a person is not enough to come to the conclusion that he is doing the same work which another person in the regular service is doing. Reliance is placed on *State of Haryana and others vs. Charanjit Singh and others etc.*

etc., AIR 2006 SC 161. Hence the petitions be dismissed being devoid of merits.

4. I have heard learned counsel for the parties and perused the records.

5. The facts in nutshell resulting the Petitioner filing a claim before the Industrial Adjudicator are that the Petitioner No. 1 was appointed in the pay scale of Rs. 425-1,110 as Aircraft Technician on 8th February, 1982. On 3rd May, 1982 the father of the Petitioner No. 2 Late Shri Satya Pal Singh, was appointed in the pay scale of Rs. 425-1,110 as Aircraft Technician. The workmen made a representation to the Management for grant of pay scale on 31st August, 1983 at par in the grade of Rs. 920-1,110 since they had received four approvals from the DGCA.

6. Vide letter dated 22nd September, 1988 the Deputy Engineer Manager replied that as per the existing rules, the promotion of welders to posts in erstwhile grades VII/VIII and IX is subject to availability of vacancies as per the standard force and on acquiring minimum groups of approvals as laid down by headquarters. It was further stated that there was no vacancy at the time in Grade VII, VIII and IX and as and when any vacancy would arise the workmen will be considered for promotion.

7. On a dispute being raised the following terms of reference were sent for adjudication to the learned Industrial Adjudicator:

“Whether the action of the Management of Indian Airlines, New Delhi in not giving the scale of pay of Rs. 910/- to Rs. 1,700/- to Shri M.C. Shukla, Senior Aircraft Technician, Shri Kishan Lal, Aircraft Technician and Shri Satya Pal, Aircraft Technician is justified. If not to what relief, the workmen are entitled to”.

8. In the claim filed by the Petitioners it was agitated that all the three workmen had been appointed as Aircraft Technician and were DGCA approved Welders in the Engineering Department and had obtained four approvals each from the DGCA and thus were required to be placed in Grade –IX. It is further contended that after the abolition of the grading system, the workmen were entitled to be placed in the pay scale of Rs. 910-1700 revised to Rs. 2005-2965/-.

9. In the written statement filed by the Management it was clearly stated that as per the provisions and Promotion Rules as and when vacancy arises, the eligible candidates are subjected to test and interview and those found suitable by duly constituted selection/promotional board, are admitted to higher grade/pay scale. From the perusal of record it is evident that in cases of all A/C Technicians (Welders) approvals from DGCA alone does not entitle them to higher pay scale. In fact the approvals from DGCA entitle them only to a special allowance in case the approval obtained are more than the minimum required in terms to Circular No. FIN/Rules/2006/933 dated 13th October, 1988. A/C Technicians, Welders cannot be automatically placed in the higher scale/grade. They are entitled to higher pay scale only on promotion to higher post subject to their suitability which is judged by a duly constituted Selection board as per the Selection/ Recruitment and Promotion Rules. The most important factor is the availability of the vacancies as per the standard force. The terms and conditions were governed by the settlement arrived at between the Management and the Indian Airlines Technicians Association (IATA), a recognized Association. A perusal of the letter No. Fin/Rules/206/933 dated 13th October, 1996 shows that the Welders in the pay scale of Rs. 600-1300 and above would be eligible to

promotion to higher pay scale subject to availability of the vacancies in the standards force on completion of two years experience in their respective pay scales and possession of at least three group approvals of DGCA. Further the various promotional avenues are also shown therein. From the evidence on record it is amply clear that the workmen were entitled to higher pay scale only on promotion which was subject to availability of the vacancy and they being found suitable. Without promotion the workmen could not claim higher pay scale as is being tried to be espoused. Thus, I find no force in the contention of the learned counsel for the petitioner that the denial of the right of equal pay for equal work to the workman is unjustified and illegal.

10. Petitions are dismissed accordingly.

(MUKTA GUPTA)
JUDGE

JULY 24, 2012
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