

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

% *Judgment Reserved on : November 16, 2015*

Judgment Delivered on : November 27, 2015

+ **LPA 969/2005**

DTC Appellant

Represented by: Ms.Avnish Ahlawat, Advocate

versus

DTC SECURITY STAFF UNION REG Respondent

Represented by: Mr.J.P.Sengh, Sr.Advocate

instructed by Mr.Anuj Agarwal,

Ms.Sana Ansari and Ms.Vanessa

Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The instant matter relates to pay-scales of posts in the Security Cadre of Delhi Transport Corporation (hereinafter referred to as the 'DTC').

2. The hierarchical structure of posts in the Security Cadre of DTC is as under:-

Deputy Security Officer

I

I

Security Officer

I

I

Assistant Security Officer

I

I

Security Havaladar

I

I

Security Guard

3. In the seventies the workmen working in Security Cadre of DTC, through their Union : Delhi Transport Corporation Security Staff Union, raised a demand of parity of pay-scales with the employees of Delhi Police. The basis of claim was two-fold. Historically parity with the employees of Delhi Police and secondly on the principle of region-cum-industry formula.

4. The appropriate Government made following reference on October 24, 1979 to the Industrial Tribunal:-

“Whether the pay scales of the Security staff upto the rank of the Asstt. Security Inspector need to be revised, and, if so, what directions are necessary in this regard?”

5. The Workmen Union filed the statement of claim in which parity with employees of Delhi Police was claimed essentially on the pleas : (i) there has been parity between the pay-scales of posts in Security Cadre of DTC and equivalent posts in Delhi Police till the year 1962; (ii) subsequent to the year 1962 pay-scales attached to (equivalent) posts in Delhi Police got revised consequent to implementation of report(s) of First and Second Pay Commissions but correspondingly pay-scales attached to posts in Security Cadre of DTC have not been revised; and (iii) two higher posts in Security Cadre of DTC viz. Deputy Security Officer and Security Officer are still having parity with equivalent posts (Deputy Superintendent of Police and Inspector) in Delhi Police.

6. In essence, the Workmen Union had stated the basis of its claim for parity of pay-scales in para 4 of its claim petition which reads as under:-

“4. That the management has not properly categorized the employees working with it and belonging to the Security Staff Section. The management should be called upon to properly categorize and place the employees at pay scales which are prevalent for similar categories in other institutions and establishments. If these pay scales are compared to those

prevalent in police service, it would be observed that the rank of police Sub-Inspector is equivalent to Asstt. Security Inspector in the DTC but the management has placed the category of Asstt. Security Inspector in much lower pay scale than available to Police Sub-Inspector. Police Sub-Inspector draws the scale of ₹425-700. This very scale should be allowed to the Asstt. Security Inspector instead of the prevalent scale of ₹330-560. Similarly Head Constable in Delhi Police is equal to Security Havaldar in DTC Management. Whereas Head Constable in the Police draws the scale of ₹260-350, Security Havaldar is given the scale of only ₹200-240/- with ₹10/- as special allowance. This anomaly should be removed and the pay scale of Security Havaldar should be raised to ₹260-350 with retrospective effect. Similarly pay scale of Security Guard should be raised to ₹225-308 as available to Constable in Delhi Police, instead of prevalent scale of DTC of ₹200-240. The management has already recognized the pay scale of Delhi Police for purposes of payment to their higher officials namely Deputy Security Officer and Security Inspector. The Deputy Security Officer is placed in the pay-scale of ₹650-900, which is equivalent to police Inspector in Delhi Police. There is no ground with the management to not to adopt the pay scales of the Delhi Police for other lower categories of the Security staff consisting of Asstt. Security Inspector, Security Havaldar and the Security Guard. It would be appropriate to set out hereunder the comparative statement of revised pay scales prevalent in 1978 with Delhi Police and now with the management respectively for purpose of clarify:

Revised pay scale of Delhi Police

D.S.P.	650-30-740-35-EB-880-40-1000-EB-1200
Police Inspector	550-25-750-EB—30-900
Police Sub-Inspector Of Police (S.I.)	₹425-15-560-560-EB-20-700
Asstt. Sub-Inspector	₹330-8-378-10-400-EB-10-480
Head Constable	₹260-5-325-EB-8-350

*Constable
(Matric)*

₹225-5-260-6-290-EB-6-308

*Constable
(Non-Matric)*

₹210-4-250—EB-5-270

Revised pay scale of DTC Security Staff

D.S.O.

₹650-30-740-35-810-EB-35-880-40-1000-EB-40-1200

*Security
Inspector (S.I.)*

₹550-25-750-EB-20-900

*Asstt. Security
Inspector*

₹330-10-380-EB-12-500-EB-15-560

Security

₹200-3-212-4-232-4-240 (₹10/- as Spl. Allowance)

*Security
Guards”*

₹210-3-212-4-232-EB-4-240

7. The claim (of parity) made by Workmen Union can be better understood with the help of table drawn by us herein under:-

<i>S. No.</i>	<i>Post in Security Cadre of DTC</i>	<i>Pay-scale attached to post in Security Cadre of DTC</i>	<i>Alleged equivalent post in Delhi Police</i>	<i>Pay-scale attached to equivalent post in Delhi Police</i>
<i>1.</i>	<i>Deputy Security Officer</i>	<i>650-1200</i>	<i>Deputy Superintendent of Police</i>	<i>650-1200</i>
<i>2.</i>	<i>Security Officer</i>	<i>550-900</i>	<i>Inspector</i>	<i>550-900</i>
<i>3.</i>	<i>Assistant Security Officer</i>	<i>330-560</i>	<i>Sub-Inspector</i>	<i>425-700</i>
<i>4.</i>	<i>N.A.</i>	<i>N.A.</i>	<i>Assistant Sub- Inspector</i>	<i>330-480</i>
<i>5.</i>	<i>Security</i>	<i>200-240</i>	<i>Head Constable</i>	<i>260-350</i>

	<i>Havaldar</i>			
6.	<i>Security Guard</i>	200-240	<i>Constable (Matric)</i>	225-308
7.	<i>N.A.</i>	<i>N.A.</i>	<i>Constable (Non-Matric)</i>	210-270

8. In the reply filed to the statement of claim, DTC pleaded that parity could not be claimed in view of difference in duties performed by employees working in Security Cadre of DTC and those of Delhi Police. It was further pleaded that there is no equivalence between the posts in Security Cadre of DTC and those in Delhi Police. Lastly, it was pleaded that DTC is going through a serious financial crisis and is thus not in a position to revise/enhance pay-scales attached to posts in Security Cadre of DTC. Paragraph 4 of the statement of claim was responded to as under:-

“Contents of para No.4 are wrong and denied. The subordinate staff of the Security Section has been categorized properly as under and their pay scale and qualifications are indicated against each:

a) *Security Inspector: ₹550-25-750-EB-30-900*

Graduate with at least 5 years supervisory experience of Watch & Ward and Security arrangement and knowledge of maintenance of fire fighting equipment and training of subordinate staff in using the same in a big transport organizations or in the army or in the Police.

b) *Assistant Security Inspector: ₹330-10-380-EB-12-500-EB-15-560*

Matric or equivalent with at least 3 years experience of Watch & Ward arrangement in a big transport undertaking or in Army or in Police. Other things being equal, ex-

Army or Police Personnel (Ex. J.C.O.'s or ASI of police) will be preferred.

c) *Havaldar:* ₹200-3-212-4-232-EB-4-240 + ₹10/- Sp. Pay.

Should have passed 8th Class from a recognized School and should be ex-Army or Policeman preferably a Pensioner.

d) *Security Guard:* ₹200-3-212-4-232-EB-4-240

Ex-Army or Policemen.

It is incorrect to compare the pay-scale of DTC Security Staff with that of Police officials on the ground that every department has its own establishment set up and the scales depend upon the responsibility and duties to be performed by the incumbent concerned. The comparison is further not justified because the duties in both the departments are entirely different from each other. While the functions of the Police Officials are to maintain law and order in the city who are the Custodian of the rights and property of the citizens and have to keep a vigilant watch in the area of their operation, the duties of the Security staff are only confined to the protection of the Corporation's staff and property. They have only to check the movement of any material, which is being taken in or out of their premises of the Corporation's various Units so that the unauthorized entry of persons in the Units and unauthorized taking out of the material is safeguarded besides protection of the D.T.C. properties. It would, therefore, be appreciated that the duties of the security staff are only localized and limited to a small area and do not normally involve risk to life but rather they have merely to be vigilant while on duty. The scale of Dy. Security Officer and Security Inspector correspond with that of Dy. Supdt. Of Police Inspector. In the case of A.S.I., a medium scale of ₹330-560 has been adopted as compared to two different scales of Sub-Inspector and Asstt. Sub Inspector. As against the categories of Head-Constable (Matric) and Constable (non-matric) the D.T.C. has only the post of Havaldars, Security Guards in the scales mentioned above. It is

wrong and denied that rank of Police Sub Inspector is equivalent to Assistant Security Inspector. In no circumstances, the rank and pay scale can be equalized of the D.T.C. Security staff to that of the Police. As already submitted above there is no connection between the nature of duties of said departments. Even otherwise it is purely the function of the individual establishment and authority to create post and attach with the pay scale as per its administration decision in the circumstances of the nature of work and as such this Hon'ble Court cannot interfere in the day-to-day functioning of the D.T.C. management. Correctness of the revised list of pay scale of Delhi Police are denied for want of knowledge. The claimants are not entitled to the scale claimed by them.”
(Emphasis Supplied)

9. In its rejoinder, the Workmen Union reiterated the stand taken by it in its statement of claim. Paragraph 4 of the written statement was responded as under:-

“That as to para 4 of the written statement, it is submitted that the union has correctly made comparison of pay scales prevailing in other institutions where member of the security staff or Police are performing similar types of duties. The reasoning given in the concluding portion of para 4 of the written statement is not sustainable. Contents of para 4 of the statement of claim are reiterated.”

10. Vide award dated August 22, 1985 the Presiding Officer, Labour Court, Industrial Tribunal, Delhi allowed the claim filed by the Workmen Union and directed that employees working on the posts of Assistant Security Officer, Security Havaladar and Security Guard in DTC are entitled to same pay-scales as are granted to their counterparts in Delhi Police with effect from January 01, 1979. Meaning thereby, it was directed that Assistant Security Officer is entitled to pay-scale of ₹425-700/- as granted to Sub-Inspector of Delhi Police; Security Havaladar is entitled to pay-scale of ₹260-350/- as granted to Head Constable of Delhi

Police and Security Guard is entitled to pay-scale of ₹225-300/- as granted to Constable (Matric) of Delhi Police.

11. In so concluding, the reasons given by the Presiding Officer, Labour Court are as under:-

- a) The argument of DTC that it does not have financial resources to accede to the claim of Workmen Union is misconceived for the reason it has come in the evidence that DTC had revised the pay-scales attached to the two higher posts in Security Cadre of DTC viz. Deputy Security Officer and Security Officer on numerous occasions in the past.
- b) The balance sheets produced by DTC relate to the years prior to making of reference in the present case and thus said balance sheets do not establish that DTC does not have financial capacity to accede to the claim of Workmen Union.
- c) It is one of the sacred duties of the management to pay to the workers their due remuneration. Management cannot afford the demand of workmen for adequate wages on the ground of their financial stringency.
- d) The decision of DTC to put off the demand of Workmen Union for higher pay-scales till the submission of report of Fourth Pay Commission which is seized of the matter is neither just nor proper.
- e) No cogent and reasonable explanation has been given by DTC to deny parity of pay-scales to three posts in Security Cadre of DTC viz. Assistant Security Officer, Security Havaldar and Security Guard with equivalent posts in Delhi Police when two higher posts in Security Cadre of DTC viz. Deputy Security Officer and Security Officer enjoy parity of pay-scales with equivalent posts in Delhi Police.
- f) The difference in qualifications prescribed for recruitment to the posts in Delhi Police and those in Security Cadre of DTC makes no

difference for the reason employees in Delhi Police are newly recruited and lack experience whereas employees working in Security Cadre of DTC are ex-serviceman and thus far more experienced than their counterparts in Delhi Police.

12. Aggrieved by the aforesaid, DTC filed a writ petition under Article 226 of Constitution of India in this Court which as per the Rules of this Court was laid before a learned Single Judge of this Court.

13. During the pendency of the said writ petition, on April 10, 2001 a meeting of the Board of DTC was held wherein it was decided to accept the award dated August 22, 1985 passed Presiding Officer, Labour Court, Industrial Tribunal, Delhi.

14. Being relevant, we note following portion of the minutes of meeting of Board of DTC held on April 10, 2001:-

“1. The award of the Industrial Tribunal dated 22.8.1985 should be accepted.

2. The Security staff and DTC should be asked to withdraw their case from the court.

3. The demand for 15% duty allowance to security personnel is rejected.

4. The pay scales of Delhi Police for equivalent ranks should be made applicable as per the award of the Tribunal.

5. Other allowances like uniform shoes, etc. should be as per DTC rules.

6. Government of NCT, Delhi should be approached to approve the decision of the Board in respect of the additional funds required.

*7. Private security staff deployment can be explored in case the need arises in the future.” **(Emphasis Supplied)***

15. But the Government of NCT of Delhi did not accept the aforesaid decision taken by the Board of DTC in its meeting held on April 10, 2001.

16. Vide impugned judgment dated November 30, 2004, the learned Single Judge has dismissed the writ petition filed by DTC.

17. Briefly stated, the reasons given by the learned Single Judge are as under:-

a) If at the higher level of posts in the security cadre pay parity with Delhi Police was implemented by DTC there was no reason not to maintain the parity at the lower posts.

b) Assuming the duties of employees of Delhi Police are more onerous than the employees working in Security Cadre of DTC, this degree of arduousness and difficulty must travel down the hierarchy. It cannot be that the work of the police force in the higher echelons is comparable to the work performed by officers holding higher posts in Security Cadre of DTC and the disparity comes about only at the lower levels. There must be some uniformity which is lacking and not explained by DTC anywhere. It is not possible to accept the ipse-dixit of DTC that there is difference in duties and responsibilities between the employees of Delhi Police and those working in Security Cadre of DTC and this difference is limited to some categories of employees only. DTC had opportunity in support of said submission advanced by DTC but failed to do so.

c) In the absence of any facts, figures or statistics, it cannot be said DTC has the financial resources to pay to officers at the higher levels, a salary equivalent to that given to similarly placed officers of Delhi Police but the financial resources are inadequate when it comes to paying a comparable salary to officers at lower level. The argument regarding

financial incapacity of DTC could have been accepted only if DTC had placed any empirical data to back up said argument which is not the case.

d) If there was any financial crunch or if DTC was running in losses as alleged by DTC, the salaries of Deputy Security Officers and Security Officers would not have been upwardly revised to keep pace with the wages of their counterparts in Delhi Police.

e) The principle of region cum industry is to be applied only if there is a necessity of searching for a comparison from a fair cross-section of the industry for arriving at a just or reasonable wage structure. In the present case, there is no such need because material is intrinsically available from within the organization itself to provide adequate guidance. If the management of one organization compares the wages of its employees to the wages of employees of any other organization, then the comparison must hold good for all categories of employees of the first organization. It cannot reasonably be said that though the comparison with Delhi Police is valid for a few categories of employees but for others, the principle of region cum industry should be applied. If the region cum industry principle is to apply, then it must be so for all categories of employees and not just a select few.

f) It is settled law that the High Court should interfere with a decision of an Industrial Tribunal only if there is substantial injustice which is not the case in the present matter.

g) The fact of the matter is that on one hand DTC accepted that impugned award dated August 22, 1985 should be implemented i.e. DTC has instructed its counsel to the contrary. However, Delhi Administration (Govt. of NCT of Delhi) did not make any submission regarding legality of impugned award dated August 22, 1985 but tacitly agreed that the award should be set aside.

18. In these circumstances, DTC has filed the above captioned intra-court appeal.

19. As already noted hereinabove, the basis of claim of parity of pay-scales with employees working in Delhi Police made by Union of employees working in Security Cadre of DTC is two-fold. Historically parity with the employees of Delhi Police and secondly on the principle of region-cum-industry formula.

20. Let us first examine the plea of historical parity on basis whereof the Workmen Union had claimed parity of pay-scales with the employees working in Delhi Police.

21. The Workmen Union had averred that there was parity of pay-scales between the posts in Security Cadre of DTC and equivalent posts in Delhi Police since the year 1962. Subsequent to the year 1962 pay-scales attached to posts in Delhi Police were revised/enhanced as a result of implementation of reports of First and Second Pay Commissions but correspondingly pay-scales attached to posts in Security Cadre of DTC were not revised/enhanced.

22. The question which arises for consideration is thus: Is mere parity between the pay-scales attached to the posts in Security Cadre of DTC and those in Delhi Police for a short period of time enough to claim parity of pay-scales by Workmen Union on the basis of so-called 'historical parity'?

23. The answer to aforesaid question lies in the following passage contained in the decision of the Supreme Court reported as 2008 (1) SCC 630 Union of India vs. Hiranmoy Sen :-

“Learned counsel for the respondents submitted that the auditors and assistants have been historically treated at par in the matter of pay scales. Although this fact has been denied by the appellant, we are of the opinion that even if it is correct,

*that will not be of any help to the respondents. To give an illustration, if post A and post B have been carrying the same pay scales, merely because the pay scale of post A has been increased that by itself cannot result in increase in the pay scale of post B to the same level. It is entirely on the Government and the authorities to fix the pay scales and to decide whether the pay scale of post B should be increased or not. The judiciary must exercise self restraint and not encroach into the executive or legislative domain.” **(Emphasis Supplied)***

24. In this regards, it would also be most apposite to refer to following passage contained in the decision of the Supreme Court reported as 2010 (5) SCC 225 State of West Bengal & Ors. vs. West Bengal Minimum Wages Inspector Association & Ors :-

“It is now well-settled that parity cannot be claimed merely on the basis that earlier the subject post and the reference category posts were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale to those categories of posts. The Pay Commission has two functions; to revise the existing pay scale, by recommending revised pay scales corresponding to the pre-revised pay scales and, secondly, make recommendations for upgrading or downgrading posts resulting in higher pay scales or lower pay scales, depending upon the nature of duties and functions attached to those posts. Therefore, the mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale and not any higher pay scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the subject post and holders of reference category posts, discharge duties and functions identical with, or similar to,

each other and that the continuation of disparity is irrational and unjust. The respondents have neither pleaded nor proved that the holders of post of Inspector (Cooperative Societies), Extension Officers (Panchayat) and KGO-JLRO (Revenue Officers) were discharging duties and functions similar to the duties and functions of Inspector-AMW. Hence, the prayers in the original writ petition could not have been granted. In fact, that is why the learned single Judge rightly held that whether the posts were equivalent and whether there could be parity in pay are all matters that have to be considered by the expert bodies and the remedy of the respondent was to give a representation to the concerned authority and the court cannot grant any specific scale of pay to them.” (Emphasis Supplied)

25. In view of authoritative dictum of law laid down by Supreme Court in West Bengal Minimum Wages Inspector Association’s case (supra) that ‘mere fact that at an earlier point of time, two posts were carrying the same pay scale does not mean that after the implementation of revision in pay scales, they should necessarily have the same revised pay scale’ Workmen Union is not justified in claiming parity of pay-scales between the posts in Security Cadre of DTC and equivalent posts in Delhi Police merely because the posts in Security Cadre of DTC and those in Delhi Police were carrying equal pay-scale at an earlier point of time.

26. A close perusal of award dated August 22, 1985 and judgment dated November 30, 2004 passed by Labour Court and Single Judge respectively shows that both Labour Court and Single Judge have granted parity of pay-scales to (three) posts in Security Cadre of DTC with those in Delhi Police on the basis that two higher posts in Security Cadre of DTC carry same pay-scales at par with two posts in Delhi Police.

27. Is the above reasoning adopted by Labour Court and Single Judge correct?

28. The principle of ‘equal pay for equal work’ was examined in great detail by a Division Bench of this Court, of which one of us was a

member namely Pradeep Nandrajog J., in W.P. (C) No.3318/2010 titled as '*GNCT of Delhi, Delhi Fire Service vs. Bholla Dutt Sharma & Ors*' decided on March 13, 2013 in following terms :-

“30. The principle of ‘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. The principle of equal pay for equal work flows out of Article 14 of the Constitution of India which prohibits discrimination.

31. The legal position pertaining to placement of posts in pay scales: It is within the domain of the executive to determine as to in what scale of pay a post has to be placed and since it is a matter of expert opinion, courts intervention has to be slow and that the court cannot assign to itself the role of an expert. But, where it is apparently manifest that two posts are identical, it would be denial of Article 14 to those who are placed in the lower pay scale. In said eventuality, it would be within the domain of the Court to issue appropriate directions.

32. 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) the principle of ‘equal pay for equal work’ can be invoked only when the employees are similarly situated. 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 'wholesome identity' between the holders of two posts;

(ii) in determining whether two posts are similarly placed or there is 'wholesome 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; and

(iv) the principle 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 principle would be automatically applied.

33. As observed by the Supreme Court, in the decision reported as 2003 (6) SCC 123, *State of Haryana &Anr. Vs. Tilak Raj &Ors* equivalence of posts has to be judged not merely with reference to volume of work. The touch stone on which equivalence has to be determined would to consider the source of recruitment, educational and other qualifications required, as also the qualitative and quantitative nature of jobs.

34. In yet another decision passed by the Supreme Court, reported as 2009 (9) SCC 514 *State of Punjab &Anr. Vs. Surjit Singh &Ors*, 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 wholesome 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 wholesome 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 at 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' 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.

35. 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 enumerated as under:

- 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.*

36. 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."

29. We note that petition seeking Leave to Appeal against afore-noted judgment dated March 13, 2013 passed in W.P. (C) No.3318/2010 being SLP (C) No.21406/2013 was dismissed by the Supreme Court vide order dated March 07, 2014.

30. To summarize: 'Equality clause can be invoked in the matter of pay scales only when there is 'wholesome identity' between the holders of two posts'.

31. In the present case, not even a word has been averred by Workmen Union in its statement of claim that there was '*wholesome identity*' between the (three) posts in Security Cadre of DTC and those in Delhi Police. (We note that even the claim made by Workmen Union regarding equivalency of posts in Security Cadre of DTC and Delhi Police was seriously disputed by DTC. Further, hierarchical structure of posts in Security Cadre of DTC and those in Delhi Police was not comparable inasmuch as there were five posts in Security Cadre of DTC while six posts in Delhi Police. Lastly, DTC had categorically averred in para 4 of its written statement reproduced by us hereinabove that duties of employees working in Delhi Police were much more arduous and materially different from those working in Security Cadre of DTC).

32. In the absence of any pleading by Workmen Union in its statement of claim regarding wholesome identity between the posts in Security Cadre of DTC and Delhi Police, the Workmen Union cannot claim parity of pay-scales between (three) posts in Security Cadre of DTC with those of Delhi Police. Merely because two posts in Security Cadre of DTC carry same pay-scale as two posts in Delhi Police is not sufficient to grant parity of pay-scales to all posts in Security Cadre of DTC with those of Delhi Police.

33. A similar was argument advanced by employees of Wireless Section of Delhi Fire Service in Bholla Dutt's case (supra) that parity of pay-scales be granted between the posts in Wireless Section(s) of Delhi Fire Service and Delhi Police for the reason the highest post in Wireless Section of Delhi Fire Service was granted similar pay scales as granted to equivalent post in Wireless Section of Delhi Police, which argument was repelled in following terms:-

“Nothing much turns on the fact that the highest post in the Wireless Section in the Delhi Fire Service i.e. the post of Wireless Officer has been granted higher pay scales than those recommended by the 4th Central Pay Commission. In order to succeed in their claim for grant of similar pay scales to the posts in the Wireless Section of the Delhi Fire Service as granted to the posts in the Wireless Section of Delhi Police, the respondents have to stand on their own legs and establish wholesome and complete identity between all the posts in the Wireless Section(s) of Delhi Fire Service and Delhi Police. Merely because the highest post in the Wireless Section in the Delhi Fire Service i.e. the post of Wireless Officer was granted similar pay scales as granted to the posts in the Wireless Section of the Delhi Police does not imply that there is complete and wholesome identity between all the posts in the Wireless Section(s) in the Delhi Fire Service and Delhi Police.”
(Emphasis Supplied)

34. Much emphasis was laid down by Workmen Union on the fact that Board of DTC in its meeting held on April 10, 2001 decided to implement the award dated August 22, 1985. Nothing much turns thereon. Our experience shows that with an intention to placate the employee, employers do tend to take decisions favorable to the employee so long the financial pinch is faced by somebody else (Govt. of NCT of Delhi in the instant case). (The said aspect has also been noticed in judgment dated March 13, 2013 passed by a Division Bench of this Court in W.P. (C) No.3318/2010 as affirmed by Supreme

Court). In any case, the decision taken by the Board of DTC to implement the award dated August 22, 1985 was subject to approval of Govt. of NCT of Delhi, which approval was not granted.

35. Lastly, we note that it has been submitted by Workmen Union in written submissions dated November 23, 2015 filed before us that posts of Assistant Security Officer, Security Havaldar and Security Guard in Security Cadre of DTC carry much lower pay-scales than their equivalent posts in various departments of DTC. The said argument is neither here nor there for both Labour Court and Single Judge have decided the instant case with reference to parity of pay-scales of posts in Security Cadre in DTC with those of Delhi Police and not with equivalent posts in various departments of DTC.)

36. The net result of above discussion is that the present appeal is allowed. Impugned judgment and order dated May 30, 2004 is set aside. The award dated August 22, 1985 is set aside and the claim filed by the respondent-Union is dismissed.

37. Parties shall bear their own costs all throughout.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 27, 2015
mamta