

Union Of India vs Tarit Ranjan Das on 8 October, 2003

Equivalent citations: AIR 2004 SUPREME COURT 852, 2003 AIR SCW 7082, 2004 LAB. I. C. 145, 2004 (1) SERVLJ 424 SC, 2003 (8) SCALE 350, 2003 (11) SCC 658, (2003) 8 JT 352 (SC), 2003 (6) SLT 768, (2004) 1 SERVLJ 424, (2004) 2 JCR 64 (SC), 2004 (3) SRJ 315, (2003) 4 KHCACJ 713 (SC), 2003 (8) JT 352, (2004) 1 ESC 147, 2004 SCC (L&S) 160, (2003) 4 SCT 566, (2003) 7 SUPREME 612, (2003) 8 SCALE 350, (2003) 11 INDLD 580, (2003) 99 FACLR 829, (2004) 1 SERVLR 28, (2004) 2 ANDH LT 48, (2004) 1 CAL LJ 57, (2004) 1 CURLR 12

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

CASE NO.:

Appeal (civil) 8173 of 2003

PETITIONER:

UNION OF INDIA

RESPONDENT:

TARIT RANJAN DAS

DATE OF JUDGMENT: 08/10/2003

BENCH:

DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:

JUDGMENT 2003 Supp(4) SCR 339 The Judgment was delivered by ARIJIT PASAYAT, J.

Leave granted.

2. The Union of India questions legality of judgment rendered by Division Bench of the Guwahati High Court upholding judgment of the Central Administrative Tribunal (for short 'the Tribunal') by which direction was given to pay Stenographers of subordinate offices the same scale of pay as paid to the Stenographers Grade C in the Central Secretariat. The said direction was given by order dated 25.2.2000 in review application no. 15/98 in O?A No. 151/91. Originally, by order dated 10.8.1998, the application No. 151/91 was dismissed by the Tribunal.

3. Factual background forming foundation of the subject matter of appeal is as follows:

4. The respondent (hereinafter referred to as 'the employee') was working as a Stenographer

Grade-II in the office of Geological Survey of India w.e.f. 4.1.1984. He was placed on the pay scale of Rs. 1400-40-1800-EB-50-2300 based on the recommendations of the Central Pay Commission. There was dissatisfaction by Several employees about the scales. A Board of Arbitration was constituted after agitation by some of the staff. It rejected the claim of absolute parity of pay scales of Stenographer Grade- II with that of Stenographer Grade C of the Central Secretariat. It was however recommended that the scale should be Rs. 1400-40-1600-50-2300- EB-60- 2600. The Ministry of Finance (Department of Expenditure) issued OM 7(18)-E3/81 dated 4.5.1990 in this regard. On the basis of Office Memorandum dated 31.7.1990 of Department of Personal and Training, with concurrence of Ministry of Finance, Department of Expenditure revised scale of pay of Stenographer Grade 'C' in Central Secretariat Stenographer Service to Rs. 1640-60-2600-EB-75-2900 with effect from 1.1.1986. It is to be noted as indicated supra that on 4.5.1990 the Ministry of Finance, Department of Expenditure by its Office Memorandum dated 4.5.90 clarified that considering the demand by the National Council of JCM, matter was referred to Board of Arbitration which considered the claim on 17/18.8.1989. The claim was rejected holding that there was no parity in the pay scale of Stenographer in the subordinate offices and the Secretariat. The award was given on 18.8.1989. When the scale of pay of Rs. 1400-40-1800-EB-50-2300 was fixed pursuant to the Award by the Board of Arbitration to Rs. 1400-40-1600-50- 2300-EB-60-2600 Ministry of Finance implemented the decision of the Board of Arbitration and Office Memorandum dated 4.5.90 as referred to above was issued. The Stenographers Grade-II in subordinate offices were placed in the same pay scales of Rs. 1400-2600 w.e.f. 1.1.1986. The view of the Union of India was that Stenographer Grade-II are not in comparable grade with Stenographer Grade 'C' in Central Secretariat. According to it, services in Stenographer Grade 'C' in the Central Secretariat belong to Grade 'B' whereas Stenographers Grade-II in Geological Survey of India are classified a Grade C (Ministerial). A representation was submitted by the respondent to the Deputy Director General, Geological Survey of India, Shilong, requesting to fix his pay in received scale of Rs. 1640-2900 in terms of Office Memorandum dated 31.7.1990. Thereafter on 10.7.1998 the respondent-employee filed O.A. No. 151/1991 before the Tribunal seeking parity of pay scale with that of Stenographer Grade 'C' of the Central Secretariat. OA was dismissed by the Tribunal holding that nature of work, duties and responsibilities of the two categories of Stenographers were not the same. Subsequently on 25.2.2000 the Tribunal took a different view in the review application filed. In the review application it held that all the relevant facts were not placed before the Central Pay Commission and it has not given any reason as to why different scales were to be fixed. It was observed that nothing in the report of the Pay Commission indicated that nature and duties of the employees were specifically considered. It only made the difference on the ground that workload and responsibilities of Stenographer Grade 'C' of Central Secretariat are expected to be heavier. Tribunal found fault with this conclusion. It was further noted that the nature of work, duties and responsibilities of the two categories of Stenographers clearly indicate that the relevant aspects were not considered by the Commission and it proceeded on a different basis. The Tribunal was of the view that Stenographer Grade-II should be placed in the pay scale of Rs. 1640-2900 by applying the logic of equal pay for equal work. Challenge before the High Court was turned down as noted above.

5. Learned Additional Solicitor General submitted that the Tribunal's decision as well the High Court's judgment proceeded on the concept of 'equal pay for equal work'. The said dicta cannot be

used in abstract. The Tribunal as well as the High Court proceeded on erroneous premises by holding that onus to prove non-application of the concept has to be on the employer. It was pointed out that it is really not so. On the contrary the person who asserts that he is entitled to 'equal pay for equal work' has to establish it. Merely because in some of the cases SLPs were dismissed that cannot be a ground to extend the benefit to the employees on the logic of 'equal pay for equal work'.

6. In response, learned counsel for the respondent-employee submitted that earlier on the basis of a policy decision 'equal pay for equal work' was being applied to both the classes of employees. Whenever there was an increase in one of the scales, it is logical that the enhanced scale should be applied across the line and uniformly. The earlier attempts of paying different scales of pay were foiled by the Tribunal and even this Court did not interfere and SLPs were dismissed. The High Court has noted that in several cases, the Tribunal and the High Court had decided similar controversies and similar pay scales were being granted. That being so, the High Court has rightly concluded that departure was not warranted. The High Court also observed that normally speaking though not necessarily all the Stenographers have almost identical duties to perform.

7. This Court in Union of India vs. Pradip Kumar Dev 2000 (8) SCC 580) after referring to various decisions dealing with the similar question in para 8 has held thus: (SCC P. 584).

"8. In our considered view, the Division Bench of the High Court was not right and justified in straight way giving direction to grant pay scale to the respondent when there was no material placed before the Court for comparison to order to apply the principle of 'equal pay for equal work' between the Radio Operators of CRPF and the Radio Operators working in civil side in the Central Water Commission and the Directorate of Police Wireless. In the absence of material relating to other comparable employees as to the qualifications, method of recruitment , degree of skill, experience involved in performance of job, training required, responsibilities undertaken and other facilities in addition to pay scales, the learned Single Judge was right when he stated in the order that in the absence of such material it was not possible to grant relief to the respondent. No doubt, the Directorate of CRPF made recommendations to the Pay Commission for giving higher pay scales on the basis of which claim is made by the respondent for grant of pay scale. The factual statements contained in the recommendation of a particular department alone cannot be considered per se proof of such things or they cannot by themselves vouch for the correctness of the same. The said recommendation could not be taken as a recommendation made by the Government. Even otherwise a mere recommendation did not confer any right on the respondent did not confer any right on the respondent to make such a claim for writ of mandamus."

8. Yet, in another decision in State Bank of India vs. M.R. Ganesh Babu 2002 (4) SCC 556) a Bench of three learned Judges of this Court, while dealing with the same principle, in para 16 has expressed that: (SCC p.

563) "16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallized and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done. 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 made a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scale of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. Differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected to an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the court."

(Also see State of Haryana and Anr. vs. Tilak Raj and others, 2003 (6) SCC 123) and Orissa University of Agriculture & Technology and Anr. vs. Manoj K. Mohanty 2003 (5) SCC 188).

9. In this case, the Tribunal and High Court seem to have completely lost sight of the fact that the Fifth Pay Commission specifically considered the question and held that there is no question of any equivalence. The Commission observed as follows:

"46.34. We have given our careful consideration to the suggestions made by Associations representing Stenographers in Offices outside the Secretariat in the light of observations made by the Third CPC. The Commission had observed that as a general statement, it was correct to say that the basis nature of a Stenographer's work remained by and large the same whether he was working with an officer in the Secretariat or with an officer in a subordinate office. The Commission was of the considered view that the size of the Stenographer's job was very much dependent upon the nature of work entrusted to that officer and that it would not be correct, therefore, to go merely by the status in disregard of the functional requirement. By the very nature of work in the secretariat, the volume of dictation and typing work was expected to be heavier than in a subordinate office, the requirement of secrecy even in civil offices of the secretariat could be very stringent. Considering the differences in the hierarchical structures and in the type of work transacted the Commission was not in favour of adopting a uniform pattern in respect of matter listed in the preceding paragraph. To our mind, the observations of the Third CPC are as relevant today as they were at that point of time and we are not inclined to overlook them totally. In view of the abovementioned distinguishable feature, we do not concede the demand for absolute parity in regard to pay scales between stenographers in offices outside the secretariat and in the secretariat notwithstanding the fact that some petitioner stenographers Grade II have got other benefit of parity in pay scale through courts. However, pursuing the policy enunciated by the Second CPC that disparity in the pay scale prescribed for stenographers in the Secretariat and

the non- secretariat organizations should be reduced as far as possible, we are of the view that Stenographers Grade II should be placed in the existing pay scale of Rs. 1600-2660 instead of Rs. 1400-2300/ Rs. 1400-2600".

10. Strangely, the Tribunal in the review petition came to hold that the Commission had not based its conclusion on any data. It is trite law that it is not open for any Court to sit in judgment as on appeal over the conclusion of the Commission. Further the Tribunal and the High Court proceeded as if it was the employer who was to show that there was no equality in the work. On the contrary the person who asserts that there is equality has to prove it. The equality is not based on designation or the nature of work alone. There are several other factors like, responsibilities, reliabilities, experience, confidentiality involved, functional need and requirements commensurate with the position in the hierarchy, the qualification required which are equally relevant.

11. In State of W.B. and others vs. Hari Narayan Bhowal and others 1994 (4) SCC 78) it was observed:

"This Court in the case of Delhi Veterinary Assn. vs. Union of India (1984) (3) SCC 1) said that in addition to the principle of 'equal pay for equal work', the pay structure of the employee of the Government should reflect many other social values. It was said:

"The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level of which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues, of promotion available and horizontal and vertical relatively with other jobs in the same service or outside are also relevant factors."

12. In the case of State of U.P. vs. J.P. Chaurasia 1989 (1) SCC 121) it was pointed out that whether two posts are equal or should carry the equal pay, depends on several factors. It does not depend just upon either the nature of work or the volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts by the Competent Authorities constituted for the purpose and Courts cannot ordinally substitute themselves in the place of those authorities. The quantity of work may be the same but the quality may be different. That cannot be determined by relying upon averments in affidavits of interested parties. It must be determined by expert bodies like Pay Commission and the Government, who would be the best judges, to evaluate the nature of duty, responsibility and all relevant factors. The same view was reiterated in the case of State of M.P. vs. Pramod Bhartiya 1993 (1) SCC 539) by a three-Judge Bench of this Court. In the case of Shyam Babu Verma vs. Union of India 1994 (2) SCC 521) a claim for equal pay by a group of Pharmacists was rejected saying that the classification made by a body of experts after full study and analysis of the work, should not be disturbed except for strong reasons which indicate that the classification made was unreasonable.

13. These aspects have been completely lost sight of by the Tribunal and the High Court.

14. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in view application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing original application. This aspect has also not been noticed by the High Court.

15. Looked at from any angle, the judgment of the Tribunal in review application and of the High Court confirming it have no leg to stand. They deserve to be set aside which we direct. The appeal is allowed.

Costs made easy.