

(2004) 01 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24300 of 2003

Union of India (UOI) and Others

APPELLANT

Vs

G.K. Murthy and Others

RESPONDENT

Date of Decision : 08-01-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16, 21, 37

Citation : (2004) 2 ALD 182 : (2004) 3 ALT 149

Hon'ble Judges : S. Ananda Reddy, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : T. Surya Karan Reddy and SC for C.G, for the Appellant; R. Briz Mohan Singh, for Respondent Nos. 1 to 3 and V.V.L. Narasimha Rao, for the Respondent

Final Decision : Allowed

Judgement

G.Bikshapathy, J.—The writ petition is filed by the Central Government challenging the order passed by the Central Administrative Tribunal in O.A. 229 of 2001 dated 1.4.2003. The respondents are the applicants before the Tribunal. Respondents 1 and 2 are working as Edit Supervisors and Respondents 3 to 7 are working as Film Editors in Doordarshan Kendra. They approached the Tribunal challenging the Office Memorandum No: 608/2/2000ATV(A), dated 28-3-2000 issued by the Union of India, Ministry of Information and Broadcasting as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and for further declaration that they are entitled for the same scale of pay as that of their counterparts in Films Division namely Editors and Chief Editors in the Films Division and non-payment of the same is discriminatory and violating of Articles 14, 16 and 21 of the Constitution of India.

2. The respondents-employees were initially appointed as Staff artists in the category of Film Editors and are at present working as Film Editors/Video Editors and Edit Supervisors in Doordarshan Kendra, Hyderabad. The initial appointment was made on contract basis, but subsequently they were appointed upto the age

of 58 to 60 years. However, by virtue of judgment of the Supreme Court in Y.K. Mehta and Others Vs. Union of India (UOI) and Another, , they were also treated as Government servants and appropriate pay scales were fixed. However, we are not much concerned with that conclusion in the decision as referred to therein as the parity scale considered was with reference to the posts of Cameraman and Assistant Cameraman.

3. The respondents in the post of Editor/Supervisor have been drawing pay scale of Rs. 2000/- to 3500/-, while the Film/ Video Editors were drawing pay scale of Rs. 1400/- to 2500/-. It is their case that they are discharging the same functions and duties as that of their counterparts in Film Division. The post equivalent to Edit Supervisor in Doordarshan is Chief Editor in Film Division, which is carrying pay scale of 2375/- to 3500/-, while the equivalent post to film/video editor is editor in Film Division, which carries pay scale of 2000/- to 3200/- and therefore, they are entitled to parity of scale on par with that of their counterparts in Film Division. When they approached the Tribunal on earlier occasion, the O.A. was disposed of with a direction to consider their case keeping in view of the recommendations of the High Power Committee and pass appropriate orders. It appears that the Government of India referred the matter to the High Power Expert Committee to study the issue and to submit recommendations. Finally, the High Power Committee constituted by the Ministry of Information and Broadcasting has gone into the aspect and recommended various scales of pay to 32 categories of posts pertaining to supervisor side in Doordarshan. In the summary of recommendations in respect of posts of 8 and 9 concerning the Edit Supervisors and Film Editors, the Expert Committee recommended the pay scale of 2375/- to 3500/- and 2000/- to 3200/- respectively. However, the recommendations of the Committee were considered by the Government of India and it passed Office Memo dated 28.3.2000 refusing to accept the recommendations in respect of 7 categories of posts including Edit Supervisor and Film Video Editor with which we are concerned. Aggrieved by the said order of the Government, the petitioners filed the O.A. before the Tribunal.

4. It is the contention of the applicants before the Tribunal that when the Expert Committee had gone in depth into the parity of scales, nature of duties performed and recruitment procedures, the educational qualifications and experience and found that the Respondents employees were discharging the same functions as that of their counterparts in film division, it would not be appropriate for the Government to deviate and refuse to accept the recommendations of the Expert Committee. It was also their case that the reasons assigned by the Government are improper and they are not in conformity with the principles laid down by the Supreme Court in catena of decisions. However, after considering the matter, the Tribunal held that the reasons assigned by the Government were unreasonable and arbitrary and set aside the Office Memo dated 28-3-2000 and declared that the applicants are entitled to the same scale of pay as recommended by the High Power Committee and further directed the authorities to release the arrears on account of the

applicability of same scale from 1.1.1996. Against the said order, the present writ petition is filed by the Central Government.

5. Learned Standing Counsel appearing for the Central Government Mr. Surya Karan Reddy submits that the order of the Tribunal is illegal and arbitrary. He submits that the Tribunal failed to consider the principle of "equal pay for equal work" in a proper perspective. He further submits that parity of scales cannot be claimed as of right. Even though in the instant case, the Expert Committee had recommended higher scales on par with that of film division employees, yet the Government being the highest body is entitled to consider the recommendations and pass appropriate orders. It is not obligatory on the part of the Government to accept the recommendations intoto. In fact, in respect of some of the recommendations made by the Expert Committee, in respect of 11 categories of posts which the Government has accepted; but in respect of 7 categories of posts including the two categories referred to above, the Government has not accepted by giving reasons. In such a situation it would not be appropriate for the Tribunal to again go into the matter, whether the reasons assigned by the Government are valid or arbitrary and issue appropriate directions. Learned Standing Counsel relied on decisions of the Supreme Court in *Union of India v. Tarit Ranjan Das* 2003 (SC) 982, and *Government of West Bengal Vs. Tarun K. Roy and Others*, .

6. On the other hand, learned Counsel for the respondents-employees submits that the order of the Tribunal is quite legal and valid, inasmuch as the Tribunal has gone into the reasons assigned by the Government and found that the said reasons are not sustainable and they run counter to the principles laid down by the Supreme Court. He further submits that when once the functions and duties discharged by the petitioners are on par with that of the film division employees, there is no reason why they should be denied the parity of scales more especially when the Expert Committee has recommended the same. He referred to various decisions including the decision reported in *Y.K. Mehta and Ors. v. Union of India and Anr.* referred to supra.

7. The issue that arises for consideration is whether the order passed by the Tribunal is sustainable in law ?

8. The facts are not much in dispute with the averments before the Tribunal. The respondents staked claim for parity of scales on par with that of their counterparts in film division. In this regard, the Government of India constituted a High Power Committee by notification dated 22.5.1989 and 21.5.1989 to go into the aspect of revision of scales in respect of Staff Artists which included the posts of Edit Supervisors and Film/Video Editors. The Expert Committee has recommended certain scales in respect of which the Government of India have accepted for certain posts and wherever the Government has not accepted the recommendations, it has given reasons. Therefore, the question that calls for consideration is whether the Tribunal can go into the validity of reasons assigned by the Government in the impugned order dated 28.3.2000 which was

challenged before the Tribunal.

9. It has been held by the Supreme Court in catena of decisions that the principle of equal pay for equal work is an abstract doctrine and it cannot be applied in all events. It has to be confined to the situations like the nature of duties, qualifications prescribed, experience stipulated, recruitment process etc.

10. The Supreme Court in *Union of India and Others Vs. Pradip Kumar Dey*, held :

"The Division Bench of the High Court allowed the appeal filed by the respondent stating the admittedly the respondent was performing technical duties and was performing more hazardous job; the Radio Operators in CRPF were not only performing similar nature of duties as that of Radio Operators of the Central Water Commission or the Directorate of Police Wireless but they were also performing more hazardous duties. The appellants appreciating the nature of work made recommendations before the Pay Commission for higher pay scale but after the Pay Commission turned down the same, they have come forward with a different stand; the appellants cannot take conflicting stands - one before the Pay Commission and the other before the Court. The Pay Commission's recommendations were not binding on the Government. They ought to have taken a decision on merits. On this basis the Division Bench gave directions as already stated above.

In our considered view, the Division Bench of the High Court was not right and justified in straight away giving direction to grant pay scale to the respondent when there was no material placed before the Court for comparison in 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 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 to make such a claim for writ of mandamus.

11. In *Tarit Ranjan Das* case (supra), the matter related to the grant of parity scales to Stenographers with that of Stenographers Grade C in Central Secretariat. Initially the Tribunal dismissed the O.A., but in review, it was

allowed. The said order came to be challenged by the Central Government before the Supreme Court. The Supreme Court after referring to Pradip Kumar and Ganesh Babu cases noted above, also took note this observation of Pay Commission in this regard which reads thus:

"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 basic 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, perusing 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 of Rs. 1400-2300/ Rs. 1400-2600".

Therefore, the Supreme Court observed:

"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 quality 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.

In *State of W.B. and Others Vs. Hari Narayan Bhowal and Others*, , it was

observed:

"This Court in the case of Delhi Veterinary Association Vs. Union of India (UOI) and Others, 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 requirement 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".

In the case of State of U.P. v. J.P. Chaurasia (1989) 1 SCC 21, it was pointed 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 Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, , by a three-Judge Bench of this Court. In the case of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , 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".

12. In T.K. Roy case (supra), the Supreme Court had again considered the principle of equal pay for equal work. It was dealing with regard to the claim of pay of Operator-cum-Mechanic for the scale of Sub-Assistant Engineer. In that regard, it held:

a. 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. (Para 4)

b. The post of operator-cum-mechanic and sub-assistant engineers are technical posts. As noticed hereinbefore, whereas for the posts of operator-cum-mechanic the qualification of school final examination and a certificate obtained from the Industrial Training Institute would be sufficient; for the posts of sub-assistant engineer the person must have a diploma from a polytechnic apart from being a matriculate. (Para 4.2)

c. It is also not in dispute that such qualification was prescribed as far back as in the year 1971 and the respondents herein were appointed thereafter. (Para 4.3)

d. The Court, in exercise of its power of judicial review cannot hold that matriculates with a certificate from ITI s or simply graduates in science would be entitled to hold the posts of Sub-Assistant Engineers. It is for the executive to lay down the qualification required for holding a post and not for the Courts. (Para 4.4)

e. Question of violation of Article 14 of the Constitution of India on the part of the State would arise only if the person are similarly placed. Equality clause contained in Article 14, in other words, will have no application where the persons are not similarly situated or when there is a valid classification based on a reasonable differentia. Doctrine of equal pay for equal work, therefore, is not attracted in the instant case. (Para 4.6)

f. 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 the statutory provision. (Para 5).

13. Learned Counsel for the employees while relying on Mehta case (supra) refers to the following extract from the judgment of the Supreme Court.

"The contention of the respondents that the category of Staff artists designated as "Sound Recordist" has no counterpart in the Film Division is without any substance. It may be that in the Film Division, the designation is "Recordist" and not "Sound Recordist" but, in our opinion, it is quite immaterial. It is not the case of the respondents that the nature of duty of the Recordist in the Film Division is something else than that of the Sound Recordist in Doordarshan. Indeed, it is the case of the petitioners in Writ Petition (C) No. 974 of 1978, who are all Sound Recordists of Doordarshan, that they perform the same duties as

performed by their counterparts in the Film Division, that is, the Recordists" or "Sound Recordists" as PG NO 609.

The case may be. At this stage, it is significant to notice that the last sentence of paragraph 6 of the Reply Affidavit of the respondents to the Rejoinder of the Petitioners in Writ Petition (C) No. 974 of 1978, affirmed by Shri Sailendra Shankar, the Director General of Doordarshan, reads as follows;

"I reiterate that the petitioners cannot be compared with the Sound Recordist of the Film Division. It may be that really the designation in the Film Division is "Recordist", but the use of the designation as "Sound Recordist" in the statement extracted above suggests that the "Recordists" in the Film Division and the "Sound Recordists" in Doordarshan are counterparts of each other. The contention of the respondents is, accordingly, rejected. We have gone through the averments in the writ petitions and those made in the counter-affidavits filed by the Director General of Doordarshan and we have no hesitation in holding that the petitioners perform the same duties as those performed by their counterparts in the Film Division. When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two, in the matter of pay. One of the directive principles of State Policy, as embodied in Clause (d) of Article 39 of the Constitution, is equal pay for equal work for both men and women. The provision of Article 39(d) has been relied upon by the petitioners. The Directive Principles contained in Part-IV of the Constitution, though not enforceable by any Court, are intended to be implemented by the State of its own accord so as to promote the welfare of the people. Indeed, Article 37 provides, inter alia, that it shall be the duty of the State to apply these principles in making laws. Even leaving out of our consideration Article 39(d), the principle of "equal pay for equal work", if not given effect to in the case of one set of Government servants holding same or similar posts, possessing same qualifications and doing the same kind of work, as another set of Government servants, it would be discriminatory and violative of Articles 14 and 16 of the Constitution. Such discrimination has been made in respect of the petitioners, who are the Staff Artists of Doordarshan, by not giving them the same scales of pay as provided to their counterparts in the Film Division under the same Ministry of Information and Broadcasting. The petitioners are, therefore, entitled to the same scales of pay as their counterparts in the Film Division.

But the question is as to from which date they will be entitled to the scales of pay as prescribed for their counterparts in the Film Division. The petitioners have claimed that such scales of pay should be admitted to them with effect from their respective dates of appointments. After having given a careful thought to this aspect, we are of the view that ends of justice will be met sufficiently, if such scales of pay are given to the petitioners with effect from the first day of the month of the year in which each writ petition was filed in this Court except that

in the case of Writ Petition (C) No. 1756 of 1986 such scales of pay shall be given to the petitioners with effect from December 1, 1983.

14. There is no dispute that the applicants are working in the Doordarshan Department and they are claiming parity of scales with that of the employees working in the Film Division. The Expert Committee found that those persons have been discharging identical and similar duties and functions as that of the employees in Film Division. But the Government had considered those recommendations and observed as follows :

Whereas the High Powered Committee has considered the issue of revision of pay scales relating to 32 categories of posts pertaining to the Production side in Doordarshan. Out of these, the Committee did not recommend any change of pay scales of 14 categories of the posts. Out of the remaining 18 categories of posts, decision has already been taken on the recommendations of the Committee, in respect of 11 categories. As such decision in respect of only 7 categories is required to be taken by the respondents.

Whereas the Government has considered the recommendations of the High Powered Committee with regard to posts of Film/ Video Editors, Edit Supervisors, Scenic Designer, Graphic Supervisor, Graphic Artist and Make-up Artist for which the Committee had recommended the revised pay scales for these posts on the basis of scales prevailing for posts in Film Division. On detailed examination of the recommendations for revised pay scales of the categories of staff indicated above, it has been observed as under:

(i) The editing unit in Doordarshan has posts in two grades only i.e., (i) Editing Supervisor (Rs. 2000-3500) and (ii) Film Editor (Rs. 1400-2500). On the other hand the Films Division has posts in four different grades viz., (i) Chief Editor (Rs. 2375-3300) (ii) Editor (Rs. 2300-3200) (iii) Asst. Editor (Rs. 1400-2300) and (iv) Asst. Editor gr. II (Rs. 950-1400). As such, no comparison can be drawn between the posts in Doordarshan and Films Division. As far as the essential qualifications for direct recruitment posts are concerned, there too is no parity. For the posts of Film Editor in Doordarshan, the essential qualifications are (i) Matriculation (ii) Degree or Diploma in Film Editing or 3 years experience in Film/ Video Editing. On the other hand the qualifications required for this post of Editor in Films Division are (i) Matriculation (ii) 6 years experience in film editing or (i) degree/diploma in film editing and (ii) 2 years experience in film editing.

(ii) The essential qualifications required for the Art Director in Films Division apart from the common qualification of degree/ diploma is 5 years experience as an Art Director in Film Industry and desirable qualifications of possessing the knowledge of mechanical drawing and experience in set design and adequate technical and cultural background. These qualifications are much higher compared to the post of Scenic Designer in Doordarshan for whom there is only one desirable qualifications of 3 years experience in stage craft.

(iii) The essential qualifications in terms of experience for the Layout Artist is 3

years whereas no experience is essential for the post of Graphic artist in Doordarshan.

(iv) The pay scales of Make-up Artist in Films , Division are lower than that of Make up Artist in Doordarshan. The Committee however, while recommending even higher pay scales for Make-up Artist in Doordarshan has not taken into consideration, experience, duties and responsibilities prescribed for the post.

Now, therefore, considering all aspects, the Government have come to the conclusion that the posts in those two Media are not on the same footing and therefore, the recommendations of the High Powered Committee as far as these scales to the revised pay scales for the above stated posts cannot be accepted.

15. From the aforesaid discussion and the reasons assigned by the Government, it is seen that the Doordarshan has two categories of posts only with the editing unit, while in the Films Division, it has four different categories. On that basis, the Government found that no comparison could be made in respect of these posts even in respect of essential qualifications for direct recruitment posts are concerned, and found that there was no parity. Therefore, from the reasons assigned by the Government, it cannot be said that the said reasons are arbitrary or unreasonable. When once the Government found that the comparison is not feasible of acceptability as the set up in the Doordarshan in editing unit is different than the set up in the Films Division and also their qualifications and recruitment process is different. Can it be said that still the Tribunal can go into the reasonableness of the reasons assigned by the Government. It is one thing to say that there were no reasons, but it is another thing to say that the reasons are arbitrary and perverse. Government found that it is not a fit case for accepting the recommendations of the High Power Committee. Though in the normal course, the recommendations of the High Power Committee are to be given proper weightage, but it does not mean that the Government is under obligation to accept and cannot disapprove the recommendations. The recommendations of the High Power Committee are only of a persuasive value, but it cannot be said that they are totally binding on the Government. It is always open for the Government to refuse or to accept the recommendations and pass appropriate orders in regard to the pay scales also. The Supreme Court in catena of judgments has held that normally the recommendations of the Expert Committee have to be accepted, but in the instant case, the Expert Committee was constituted by the Government of India itself and the Government has every right to consider whether the recommendations are to be accepted or not to be accepted. While not accepting the recommendations, the Government has given reasons establishing that the parity cannot be maintained between the Doordarshan Editing Unit and the Films Division Unit. In such a situation, it would not be appropriate for the Tribunal to again scan those reasons and to hold that the reasons assigned by the Government are unreasonable and improper. It is to be noted that the Courts do not have any technical expertise and the Government is the final authority in type of decisions and in the absence of such

an expertise and skill, it is inappropriate on the part of the Courts to interfere with the decisions taken by the Government in respect of parity of scales on the basis of equal pay to equal work. The Tribunal has completely relied on the recommendations of the Expert Committee holding that the Expert Committee has gone in depth of the situation and such a recommendations ought to have been accepted by the Government of India. But the Tribunal failed to consider that the Government is the highest body in the hierarchy of the administration and it has power to accept or reject the recommendations of the Committee. While refusing to accept the recommendations, the Government had given reasons which cannot be said to be totally irrelevant or extraneous to the matter in issue nor can it be said that the reasons are perverse. The difference in educational qualifications, experience and hierarchical set up of respective units in Doordarshan and Film Division being different, the denial of parity scales cannot be said to be unsustainable. In those circumstances, keeping in view the judgments of the Supreme Court, as referred to by the learned Standing Counsel of the Central Government, we hold that the Tribunal has committed an error in allowing the application filed by the employees. Accordingly, we declare that the order of the Tribunal is not sustainable and accordingly, it is set aside and the O.A. stands dismissed.

16. In the result, the writ petition is allowed. No costs.