
(2002) 05 DEL CK 0223
In the Delhi High Court
Case No : CWP No. 4399 of 2001

Union of India (UOI)

APPELLANT

Vs

Suresh Kumar Sharma and Others, Jr. Supervisors

RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Citation : (2002) 05 DEL CK 0223

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; George Paracken, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—Unions of India which is the petitioner in the instant case feels aggrieved by the judgment and Order dated 13th September, 2000 passed by the Central Administrative Tribunal, Principal bench, New Delhi in Original Application No. 2249/99. This Original Application was filed by the respondent herein seeking parity in pay scales with Data Entry Operators (hereinafter referred to as DEOs, for short) in other Ministries/Departments in the revised scale of pay of Rs. 1600-2600/- w.e.f. 1st January, 1986. The Tribunal by reason of the impugned judgment has allowed the said Application holding that the respondents herein are entitled to the aforesaid revised pay scales w.e.f. 1st January, 1986 at par with Data Entry Operators (hereinafter referred to as DEOs, for short) in accordance with O.M. dated 11th September, 1989. Directions were issued to the petitioner to grant the same pay scale to the respondents here w.e.f. 1st January, 1986. However, the respondents are not granted arrears being difference in the pay scale w.e.f. 1st January, 1986 but only fixation of revised pay scale w.e.f. 1st January, 1986.

2. Before proceeding to take note of challenge of the Union of India to the impugned judgment and dealing with the same, it would be appropriate to take stock of few facts. It would also be appropriate to take note of the reasons given

by the Tribunal in the impugned judgment to appreciate as to how the Tribunal dealt with the issue.

3. The respondents herein, are working as Jr.Supervisors in the Office of the Registrar General of India (hereinafter referred to as RGI, for short)Ministry of Home Affairs, Government of India. The respondents were promoted to the post of Jr. Supervisor son different dates between 1988-1993. Prior to their promotion to the post of Jr. Supervisors they were working as DEOs in the scale of Rs. 330/- to 560/-. The post of Jr. Supervisors carried the pay scale of Rs. 405/- to 700/-. It is stated that the following organisations has the sizeable EDP (Electronic DataProcessing) staffs :- (i) National Information Centre,(ii) Department of Statistics, (iii) Registrar General of India, (iv) National Crime Record Bureau (Dte. of Coordination Police Computer), (v) Department of Space and (vi) Ministry of defense. The staff existing in these organisations has been classified into three categories namely :- (a) Data Entry Operator, (b)Programme Assistant/ Console Operator and Programme (c)System analyst and above.

4. The Fourth Pay Commission agreed with a suggestion that there should be a regularly constituted service for staff engaged on EDP work, but a separate cadre of EDP officers was found to be feasible. It was felt that due to rapid development of computerisation in administration, existing employees should be exposed to this discipline so that their skills get upgraded for switch over to new technology of work. It was suggested that as a long term policy it will be desirable to develop a cadre of experienced employee strained in EDP and other related areas of work. In view of these facts, the Pay Commission did not suggest any pay scales etc. and recommended in para 11.45 of its report as follows :-

"We are of the view that the Department of Electronics should examine the matter and suggest reorganisation of the existing posts and prescribe uniform pay scales and designations in consultation with the Department of Personnel. Until then the pay scale and special pays recommended by us in chapters 8 and 24will apply to these posts".

5. The recommendations of the IVth Pay commission in Chapters 8 and 24 deal with proposed pay structures of civilian employees and special pay and Deputation(duty) allowance respectively. In para 8.39 of Chapter8, the Commission recommended that "keeping in view the levels from which promotions are made to these posts as also broadly comparable supervisory duties, were commend that posts in the scale of Rs.425-640,Rs.425-7000 and Rs.455-700 may be given the scale ofRs.1400-40-1800-63. 50-2300. This recommendation of the Pay Commission was duly accepted by the Government and the applicants were given the said pay scale ofRs.1400-2300 w.e.f. 1st January, 1986.

6. In pursuance to the recommendation of the IV Pay Commission contained in para 11.45 of its report, a Committee popularly known as She shagiri Committee

was constituted by Department of Electronics in 1986 itself. The Committee submitted its report which is to the following effect :-

After careful consideration of the recommendations made by this Committee, Government of India vide Ministry of Finance, Department of Expenditure O.M.No. F.7(1)/IC/86(44) dated 11.9.89 introduced following pay structure for Electronic Data Processing posts which inter alia comprise pay scale of Data Entry Operators as indicated below :-

- - S.No. Designation of Post Pay scale -----
----- 1. Data Entry Operator Rs.1150-1500
This will be entry Grade "A" Grade for Higher Sec. with knowledge of Data entry work.
2. Data Entry Operator Rs.1350-2200 This will be Grade "B" entry Grade for graduates with knowledge of Data Entry work or or promotional grade for Data Entry Operator Grade "A"
3. Data Entry Operator Rs.1400-2300 Promotional Grade Grade "C"
4. Data Entry Operator Rs.1600-2660 Promotional Grade Grade "D"
5. Data Entry Operator Rs.2000-3500 Promotional Grade Grade "E"

All Ministries/Departments were directed to the review the designation, pay scales and recruitment qualification of their posts and revise the same as per the structure indicated by the Government and wherever it was necessary to revise the pay scale of the existing posts and the concerned Ministry/Department was directed to issue a notification as to the revised pay scale.

In the office of the RGI the following electronic Data Processing posts were available before 1.1.86 :

- Data Entry Operator (Group C) in the scale of pay of Rs.950-1150.
- Data Entry Operator (Group C) in the scale of pay of Rs.1200-2040.
- Junior Supervisor in the scale of pay of Rs.1400-2300.
- Senior Supervisor in the scale of pay of Rs.1640-2900.

In the Department of Registrar General of India (RGI) the revision was suggested only in the designation and pay scale of only Operators Group "C" in the scale of Rs.1200-2040, re-designating the post as DEO Group "B" in the revised scale of pay of Rs.1350-2200 w.e.f. 11.9.89. The applicants are working as Junior Supervisors in RGI. Even though the Junior Supervisors and the Senior Supervisors continued to be the promotional posts for the DEOs Group "B", their designation and pay scale were not revised.

7. The applicants along with others, Therefore, filed OA-1831/93, praying for the

review/revision of their pay scale also as per the aforesaid OM. The Tribunal by its order dated 2.9.94, although prima facie found that the applicants were also discharging the functions of EDP in RGI, but, without granting the relief prayed for, directed the petitioner herein to consider the case of the applicants/respondents herein regarding equation of the pay in compliance with the orders in OM dated 11.9.89 and if they were found eligible they should be given the benefits.

8. The matter was considered by the petitioners which resulted in passing of the impugned Order dated 10th November, 1995. As per this Order the respondents were not entitled to the benefit of OM dated 11th September, 1989 as they were not performing the functions of DEO. The respondents challenged this Order by filing Original Application No.2249/99 which, as mentioned above, stood allowed by the learned Tribunal vide impugned judgment holding that the respondents are discharging the same duties and functions as discharged by DPOs/DEOs and Therefore would be entitled to the benefit of OM dated 11th September, 1989.

9. The Tribunal found that in its earlier Order dated 2nd September, 1994 passed in Original Application No.1831/93 it had observed that there were certain anomalies in the grant of extant pay scales to The respondents herein to the post of Junior Supervisors who were discharging the functions of EDP in RGI. Thus the categorical finding was recorded by the learned Tribunal even earlier that the respondents were discharging the same function of EDP. However, without granting the relief itself, it had directed the petitioners to consider the case of the respondents and grant them the relief. The Tribunal, in the impugned judgment, was also swayed by the Stand of the Department itself taken before the Vth Pay Commission when the question of up gradation of their scales came to be considered by the said Pay Commission. It was found that the Department itself had, in its OM dated 10th August, 1995 while forwarding the demand of the respondents for grant of suitable pay scales to EDP in RGI has mentioned that this demand was examined by the Department and it had given its opinion for further necessary action.

10. Relying upon this OM dated 10th August, 1995 the Tribunal has observed in the impugned judgment that when the department itself has recommended pay scale of Rs.1600-2660/- for the respondents, it was a classic instance of approbate and reprobate and the principle of estoppel would also operate against the petitioners herein. The Tribunal thereafter dealt with the impugned Order dated 10th November, 1995 issued by the petitioners herein and held that the same was not factually correct. The findings of the Tribunal on this Order dated 10th November, 1995 proceeded as under :-

"Now come the order dated 10.11.95, the impugned order. It says that the Junior Supervisors and the Senior Supervisors do not perform DEO work and the said work was done by Group "B" and "D" Operators. But it does not indicate the nature of work that was being performed by the Supervisors other than the DEOs. Infact, we find what was done by The respondents in pursuance of the

judgment of the Tribunal was only to restructure the existing pay. It is in that we found any mention having been made as to the nature of work that was being performed by the Supervisors. When a clear finding was given by the Tribunal upon consideration of the case and after hearing the arguments of both the sides in favor of the applicants and particularly when they seek to resile from their own proposals, it was incumbent upon the respondents to have considered the duties and responsibilities of the applicants with reference to the DEOs and also give reasons that what type of functions they have been performing to decline the benefit of the revised pay scale. the impugned order is, Therefore, whollyarbitrary, laconic and cryptic. It should be noted that the department hadnot set up and expert body to evaluate the functions and responsibilities. Concerned respondents n the OA were asked to evaluate their functions for the grant of benefit.

In our view the more crucial aspect for consideration is that the Fifth Central Pay Commission, which is an Expert Body having considered the duties and responsibilities of the applicants found that they were doing the Data Entry Operator work and though their nomenclature was Supervisors they should be considered as performing the same work as DEOs and had accordingly granted the revised pay scale but w.e.f. 1.1.96. IT is nobody"s case that their functions have been overnight changed w.e.f.1.1.96. All along they have been performing the same work which is supported both on the findings of The Tribunal as well as their own proposal. The department cannot now reprobate. Even a lay man can say from the perusal of the duties and responsibilities of the applicants that their functions essentially comprise of Data Entry Operating work. The learned counsel Sh. Bhardwaj submits that the proposal by the Department only shows that their duties are "equal to DDE Operator Grade "D" as per schedules" and not that they are doing DEO work. At this stage, it is useful to refer to para 6 of OM dated 11.9.89:

"The pay structure given in para 1 above is applicable to EDP posts as such and not to the cadres of Clerks, Telephone Operators, Telegraphist, Office Assistant, Stenographers, etc. who maybe utilized partly or wholly for EDP work. Where there is a doubt if any post falls in the category of EDP posts, reference may be made direct to National Informatics Centre (NIC), Ministry of Planning, New Delhi for clarification."

11. Challenging the aforesaid findings of The Tribunal, Mr. A.K. Bhardwaj, learned counsel appearing on behalf of the UOI submitted that after Order dated 2nd September, 1994 was passed by the Tribunal in OA.No. 1831-32/93. There was indepth examination of the matter by the petitioners and it was found that respondents herein - EDP in RGI were not doing the same job as done by DPOs in other Ministries. It was submitted that the comparison of the duties, functions and jobs of employees was essentially an administrative function and the Tribunal could not assume this role. Reliance was placed on para 5 of the OM dated 10th November, 1995 to show that the functions being discharged by EDPs

in RGI are different from DEOs, which makes the following reading :-

"The Junior Supervisors (pay scale Rs.1400-2300) and Senior Supervisors (Rs.1640-2900) of the Office of the Registrar General, India do not perform data entry operation work. The Data Entry work is done by the Data Entry Operators Grade A and Data Entry Operators Grade B. The pay scales of both these posts are lower than the next higher level of Junior Supervisor, who are in the scale of Rs.1400-2300. The hierarchy of EDP posts in the office of the RGI vis-a-vis the hierarchy of the pay structure indicated in the Ministry of Finance, Deptt. of Expenditure O.M. dated 11.9.89 is as under :-

Hierarchy	In	O/o.	RGI	with	pay	S.No. scales.
Operator Grade "A" (Rs.1150-1500)						1. Data Entry
Operator Grade "B" (Rs.1350-2200)						2. Data Entry
Junior Supervisor (Rs.1400-2300)						3. Junior Supervisor
Senior Supervisor (Rs.1640-2900)						4. Senior Supervisor

Hierarchy of EDP posts in terms of Min. of Finance O.M. dated 11.9.89 with pay scales.	S.No.
Data Entry Operator Grade "A" (Rs.1150-1500)	1.
Data Entry Operator Grade "B" (Rs.1350-2200)	2.
Data Entry Operator Grade "C" (Rs.1400-2300)	3.
Data Entry Operator Grade "D" (Rs.1600-2660)	4.
Data Entry Operator Grade "E" (Rs.2000-3500)	5.

Thus the existing pay structure of the hierarchy of posts including Junior Supervisor and Senior Supervisors in the office of the RGI would be more or less on the same lines of the pay structure indicated in the Ministry of Finance orders dated 11.9.89. Infact in the case of Senior Supervisor the pay scale reason the higher side as compared to Data Entry Operator, Grade "D".

As the incumbents of the posts of Junior Supervisor and Senior Supervisor in the Office of Registrar General of India do not perform the function of data Entry Operation work they are not on all fours with the posts covered by the Ministry of Finance, Department of Expenditure, Office Memorandum dated 11.9.89. Therefore, the posts of Junior Supervisors and Senior Supervisors would not be covered by the O.M. dated 11.9.89 for rationalization/revision of pay scales. It has, Therefore, been decided by the Govt. that the existing pay scale and designation of the post of Junior Supervisor and Senior Supervisor in the Office of the Registrar General of India including posts under its Directorates, do

not require any modification.

12. In any case, it was submitted The respondents not having challenged the earlier order dated 2nd September, 1994 whereby they were not granted relief and the matter was left to the decision of the administration, could not now be given relief by The Tribunal w.e.f. 1st January, 1986. It was also submitted that the Tribunal wrongly relief upon the recommendation of the Vth Pay Commission to give relief to the respondent w.e.f. 1st January, 1986 inasmuch as the reason for grant of higher pay scale by the Vth Pay Commission was not on the ground of "equal pay for equal work" i.e. after comparing the duties but on upgradation of pay scales of the respondent which was given to the respondents w.e.f. 1st January, 1996 as was clear from para 170.3 of the recommendations. This para is to the following effect :-

170.3 The 3rd and the 4th CPCs submitted their reports in March, 1973 and June, 1986, and their recommendations were given effect from 1.3.1973 and 1.1.1986 respectively. In our chapter on "Continuing Machinery for Pay Revision" we have recommended revision at pay scales of Central Government Employees once every 10 years. Since the 4th CPC pay scales came into effect from 1.1.1986 our recommendations on revised pay scales and Dearness Allowance should logically be given effect from 1.1.1986 at the 12 monthly AICPI average of 1510. This will prepare the ground for a decennial pay revision for Central Government Employees in the years to come. Even though this effective date, recommended by us, will also cast a burden of 15 months' arrear payments on the Central Government's next budget, it is felt that this reasonable and legitimate claim of the Central Government employees cannot be wished away. Our recommendations on pensionary benefits shall also be given effect from 1.1.1996. However, our recommendation on introduction of new allowances, revision of rates of allowances etc. (including CCA) may be given effect prospectively, because of the heavy financial liabilities involved and also due to the fact that many of the increases in the rates of existing allowances have made a qualitative difference to the allowances rather than being just a marginal increase. Many of the allowances being meant to reimburse expenditure incurred by the employees should not be raised significantly on a retrospective basis, as they would thereby become a source of unintended benefit to the employees.

13. At the end it was submitted that the respondent had filed forged document before The Tribunal Along with O.M. dated 10th August, 1995. What was annexed was a representation of respondents themselves but an impression sought to be given by the respondents was as if the documents were that of the Department. Thus, according to the petitioners, the respondent misled the Tribunal and obtained the impugned Order in their favor.

14. Refuting the aforesaid contentions the learned counsel for the respondents submitted that even while disposing of the respondent's Original Application filed in the year 1993, the Tribunal gave categorical findings in its Order dated 2nd

September, 1994 to the effect that the respondents were discharging the same duties as that of DEOs. However, instead of passing the Order of its own, the Tribunal left it to the Government to pass appropriate Order. When the petitioners mischievously denied the benefits by reason of impugned Order dated 10th November, 1995 alleging that they were not performing the same duties as DEO in the teeth of Tribunal's observation, the Tribunal had no option but to quash this Order and grant the relief itself. It was submitted that the Tribunal had not done any exercise of comparing the duties but only relied upon the exercise done by the Department earlier while forwarding its comments to the Vth Central Pay Commission and also the exercise done by the Vth Pay Commission and granted the relief on that basis. It was further submitted that in fact EDPs in the Office of the RGI were also treated as part of EDP staff which was clear from the relevant recruitment rules. The learned counsel also relied upon the O.M. dated 6th January, 1998, 11th November, 1997 and 22nd March, 2000 in support of his submission to the effect that The respondents herein were borne on EDP cadre common to all Ministries and Therefore were entitled to the same pay scale.

15. The events as unfolded reveal that the IV Pay Commission had observed in para 11.45 of its Report that the Department of Electronics should examine the matter and reorganise the existing posts and prescribe uniform pay scales and designation in consultation with the Department of Personnel and Training. Till that exercise was done, the pay scales recommended by the IV Pay Commission were to be given to the incumbents of such posts in the Department. Thus the IVth Pay Commission had in its mind that there should be a regular body constituted for the development of the staff engaged in EDP work. It was because of the rapid development of computerisation in administration and the IVth pay Commission had also observed that the existing employees should be exposed to this discipline getting more aptitude for new technology of work. This had led to setting up of the Seshagiri Committee and on the basis of the recommendation of that Committee, O.M. dated 11th September, 1989 was issued rationalising the Pay scales of electronic data processing post. While other Ministries/Departments of Government of India where such EDP posts existed were given the benefit of this O.M., the grievance of the respondents here in working as Jr. Supervisors in the Office of the RGI was that it had not been extended to them though they were similarly situated. They filed Original Application No. 1831/93 which culminated into Order dated 2nd September, 1994. A perusal of the Order shows that when the said Original Application was pending, counsel for the Department had taken various adjournments for consideration of the matter at the administrative level. However, when nothing was done departmentally, the Tribunal passed order dated 2nd September, 1994. In this Order the Tribunal took note of the fact that Vth Central Pay Commission had since been constituted and had started functioning. It also took note of the proposition of law to the effect that primarily it is the function of the administration to deal with the equation of pay with the post. In

these circumstances, it disposed of the said petition by directing the Government to consider the case of the respondent herein regarding equation of pay in compliance with the Order in accordance with the O.M. dated 11th September, 1989. The operating para of the judgment reads as under :-

"We are not oblivious of the fact that OM of 1989 referred to above has already given benefit to number of employees alleged to be similarly situated as the applicant and even the recommendation of the 5th pay commission, the applicant shall be granted the relief of revision of scales that will be prospective and in that event they will be put to disadvantages position and monetary loss.

We have also gone through the facts placed before us regarding recruitment rules, pre-revised pay scales, replacement scales and the scales laid down in the OM of 1989 referred to above. We find that there is certain anomalies in the grant of extant pay scale to the applicant for the post of Junior and Senior Supervisors, who are discharging the functions of EDP in RGI. We do not go into further details and dispose of the original application with the following directions:

1) The respondents are directed to consider the case of the applicants regarding equation of pay in compliance with the order in accordance with OM dated 11.9.1989 and if they are found eligible because of entry to the service, similarity of the recruitment rules, duties and responsibilities and functions discharged by them is same and has been given the benefits by other Ministries/organisations of Union of India where the aforesaid OM has been applied with certain modifications, may be granted the same benefits.

2) The respondents are directed to comply this process expeditiously and it shall be in the fitness of things before the recommendation of the 5th pay commission are received, forwarded the same also to the 5th pay commission, if the necessity arises. The applicant may also be considered for getting the benefit in that in other organisations/ministries of the Government of India has been given that benefit of pay scales.

16. The observations made by the Tribunal in para 7 above would show that the Tribunal had gone through the recruitment rules, pre-revised pay scales, replacement scales and scales laid down in OM dated 11th September, 1989 and found that there were certain anomalies in the grant of extant pay scales to the respondent herein who were discharging the functions of EDP in the office of RGI. There is no detailed discussion or definite findings given on this aspect. Expressing tentative view it left to the Government to pass appropriate Orders observing that it was primarily an administrative function.

17. The petitioner after examining the matter rejected the case of the respondents herein vide OM dated 10th November, 1995 and the reason given is that the Jr. Supervisors and Senior Supervisors of the Office of RGI do not perform same data entry operation work.

18. The tribunal by reason of the impugned judgment has set aside aforesaid

O.M. dated 10th November, 1995. The Tribunal in the first instance, relied upon its earlier Order dated 2nd September, 1994. No doubt in para 7 thereof some observation made by the Tribunal are to the effect that there were certain anomalies to the grant of extant pay scales to the respondent herein in the post of Junior and Senior Supervisors who were discharging the functions of EDP in the office of the RGI. Fact remains that The Tribunal did not go into further details and rather directed the petitioner to consider the case of The respondents regarding equation of pay. Therefore the observation made by the Tribunal were only tentative and the matter was left to the Government to consider the case and undertake the exercise of equation of posts and pay. The Tribunal thus could not have relied upon these observations for coming to the conclusion that the respondents herein were discharging the functions of EDP in the office of RGI.

19. In so far as reliance upon the proposal placed before the Vth Pay Commission by the Department is concerned, the Tribunal has committed an obvious factual error. The OM dated 10th August, 1995 sent by the Department to the Vth Pay Commission includes comments furnished by the Association of The respondents. The Tribunal while reproducing this OM has also reproduced para 31.07 i.e. relating to proposal of pay scales and note appended thereto.

It is on the basis of this note that The Tribunal came to the conclusion that once the Department itself has contended that the respondent were entitled to equal pay, they could not now resile from their stand and applied the doctrine of estoppel. However, the aforesaid para 31.07 was not the part of OM dated 10th August, 1995. In fact along with the afore said OM, comments of the union/ Association were also forwarded and this para 31.07 is the reproduction of these comments. Therefore, what is stated in the proposal or note was the case of the respondent and not of the Department.

20. Here it would be relevant to point out that even the recommendations made by the authorities, although that is not the case here, by itself may not be a sufficient ground to grant all the relief. This was so held by the Supreme Court in the case in Union of India and others versus Pradeep Kumar Dey reported in JT 2000 (Suppl.2) SC 445) and particularly the following observations there from :-

8. "... 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 absence of such material it was not possible to grant relief to the respondent ...

21. The third ground given by the Tribunal is the recommendation of the Vth Central Pay Commission. The Tribunal has observed that the Pay Commission which is an expert body having considered the duties and responsibilities of the respondents herein and found that they were doing the data entry operator work and though their nomenclature were supervisors they should be considered as

performing the same work as DEOs and had accordingly granted the revised pay scales w.e.f.1st January, 1996.

22. It was the submission of learned counsel for the petitioner that the Vth Pay Commission never recommended the higher pay scales after comparing the duties. Instead, the Vth Pay Commission recommended the upgradation of pay scale of Rs.1600/- - Rs.2660/-(revised scale of Rs.4500/- - Rs.7000/-) to the respondent herein only for the reason that incumbents in the feeder post of data entry operator grade B(Rs.1350/- - Rs.2200/-) on promotion, in the hierarchy, to the grade of Junior Supervisors (Rs.1400/- -Rs.2300/-) are granted higher pay scale on account of merger of pay scales of Rs.1350/- - Rs.2200/- and Rs.1400/- - Rs.2300/-). Therefore, according to the learned counsel for the petitioner it was the result of upgradation of pay scales that the respondents here in were granted the higher pay scales w.e.f. 1st January, 1996 on the recommendation of the Vth Pay Commission and not on parity of their duties with the DPOs. It was pointed out that the Commission had recommended a similar scale of Rs.1640/- - Rs.2900/- for Data Processing Assistant (Grade-A) and Senior Supervisors. It was also pointed out that the Pay Commission had recommended retention of the designation of Junior Supervisors and Senior Supervisors and there was no recommendation to change the designation of DEO Grade-D, Grade E, etc.

23. We have gone through the recommendation of the V Pay Commission. We find there from that the main demand of the All India Census Employees Federation relating to the Office of the RGI was the up gradation of the posts in various divisions/cells. This is clearly spelt out in para 70.7 of the report. Thereafter the recommendations contained upgradation of certain posts and revised pay scales as per the said upgradation. Admittedly while doing so the Vth Pay Commission did not compare the duties of the DEO's with their counterparts in other organisations. Therefore, we agree with the submission of learned counsel for the petitioner that the Tribunal was not correct in coming to the conclusion that the Vth Pay Commission as an Expert Body had considered the duties and responsibilities of the respondents herein and found that they were doing some work as DEOs and on this ground that Vth Pay Commission had granted the revised pay scales w.e.f. 1st January, 1996.

24. Thus the entire premises of the Tribunal's Order is founded on wrong assumption of facts. There cannot be any doubt that had this exercise been done by the Vth Pay Commission and had the Vth Pay Commission found the duties of the respondents herein being the same as that of the DEOs the position would have been different. That is not the factual position. It cannot be said that there is any study undertaken by any Expert Committee comparing the job profiles of the officials working in the two organisations. In the absence thereof it is not permissible for the Court to apply the principle of "Equal Pay for Equal Work". Reference in this connection may be made to the recent judgment of the Supreme Court in the case of Union of India and Ors. v. Pradeep Kumar Dey

(supra) and particularly the following observations there from:-

8. "... 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 mere recommendation did not confer any right on the respondent to make such a claim for writ of mandamus."

25. On the contrary, in the present case when the respondent herein had filed Original Application No. 1831/93 on an earlier occasion, while disposing of the same vide Order dated 2nd September, 1994 The Tribunal had directed the Government to consider the case. After consideration of the case, the Government by the impugned OM dated 10th September, 1995 refused the relief to the respondent herein by giving the reason that Jr. Supervisors and Senior Supervisors of the Office of the RGI do not perform data Entry Operation work.

26. At this stage it may be relevant to point out that same relief was claimed by similar officials to which category the respondents belong i.e. Junior and Senior Supervisors in the Office of the RGI itself, by filing Original Application No. 569-70/93 before the Cuttack Bench of the Central Administrative Tribunal. The Government had opposed the aforesaid Original Applications by raising the same contention namely, the Jr. Supervisors and Senior Supervisors were not doing the same duties as were being performed by DEOs in other organisations. The Tribunal had rejected the Original Applications by accepting the aforesaid stand of the Government. The Tribunal observed as follows in its Order dated 26th April, 1999 passed in Original Application No. 570/93:-

"We have in an Order delivered today in OA No. 569 of 1999 (Sarat Chandra Rout and Ors.. v. Union of India and Ors.), held that Junior Supervisors have no claim for getting their post redesignated as Data Entry Operator Grade-D. In the order of the Ministry of Finance, Data Entry Operator Grade-E is a promotional grade from Data Entry Operator Grade-D. As such, Senior Supervisors, if they have to be fitted in as Data Entry Operator, would be fitted in only as Data Entry Operator Grade-D. But the existing scale of Senior Supervisor is higher than the Data Entry Operator Grade-D which has also been noted by the Registrar General in his order dated 10.11.1995. In this order, Senior Supervisors have been compared with both Data Entry Operator Grade-D and Data Entry Operator Grade-E, the latter carrying scale of Rs. 2000-3500/-. It is this scale which the applicants have asked for. The Registrar General has mentioned in this order that Senior Supervisors in the Office of Registrar General do not perform data entry operation work. The applicants have in Annexure-12 enclosed an order dated 24.5.1993 in which Director of Census Operations, Bhubaneswar, has instructed the Junior Supervisors to work in terminals and do data entry work. From this it does not appear that this is a permanent arrangement and the job requirement

of Junior Supervisors has been changed to include data entry operation work. In any case, the Registrar General in his order dated 10.11.1995 two years later has noted that Junior Supervisors do not perform any data entry operation work. We have no reason to disbelieve the same. So far as the present applicants before us are concerned, they are SeniorSupervisors and they have shown no document that they do data Entry Operation work. As they do not perform data entry operation work, they can have no claim to be designated as Data Entry Operator Grade-E. As we have already noted the scale of pay of SeniorSupervisor is higher than the Data Entry Operator Grade-D. It is also to be noted that the classification of Data Entry Operators in different grades from Grade-A to Grade-E is not to be mechanically followed in each Department and depending upon requirement and situation in the Department, the existing Electronic Data Processing staff have to be redesignated and given corresponding pay scales. Registrar General in his order dated 10.11.1995 has examined the matter and taken the view that designation and pay scale of SeniorSupervisors do not require any change. There is no material before us to hold that the decision of the Registrar General is incorrect or is based on considerations which are not relevant. In paragraph 5 of this order the Registrar General has mentioned that Senior Supervisors do not perform Data Entry operation work. The letter dated 24th May, 1993 enclosed by the applicant also does not relate to SeniorSupervisors. Even for Junior Supervisor it is not clear that this order asking them to work in terminates and to do Data Entry work is a permanent arrangement and accordingly their job requirement or duty charts have been changed. In view of this, we hold that the applicants have not been able to make out a case to get the scale of Rs. 2000 - 3500/- as Data Entry Operator Grade-E according to the recommendations of the Seshagiri Committee and in accordance with FinanceMinistry's O.M. dated 11.9.1989.

27. In view of the foregoing discussions, we are of the opinion that the judgment of the Tribunal cannot be allowed to stand which is accordingly set aside. This Writ Petition stands allowed.

There shall be no order as to costs.