

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

WRIT PETITION(S) No. 5746 OF 2005

Between:-

- 1. KAMAL KANT PANDEY, OF MR. D.PANDEY, AGED ABOUT 53 YEARS, CHARGEMAN GRADE-II (T) VEHICLE FACTORY, JABALPUR, R/O H.NO. 3007, SECTOR-I.**
- 2. S.N. CHOURASIA, SON OF MR. K.L. CHOURASIA, AGED ABOUT 55 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
- 3. T.M. PORTER, SON OF MR.C.J. PORTER, AGED ABOUT 59 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
- 4. J.P. SHARMA, SON OF MR.V.P. SHARMA, AGED ABOUT 56 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
- 5. B.P. JAISWAL, SON OF MR.M.L. JAISWAL, AGED ABOUT 59 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
- 6. S.P. UPADHYAYA, SON OF MR.BALMUKUND, AGED ABOUT 55 YEARS,**

CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.

7. **ABDUL QUYAM, SON OF MR. ABDUL SHAKOOR, AGED ABOUT 56 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
8. **RAM KISHAN, SON OF MR.R.L. PATEL, AGED ABOUT 59 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
9. **PURAN KUMAR, SON OF MR.S.K. GHOSH, AGED ABOUT 56 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
10. **JAI RAM TIWARI, SON OF THE LATE R.M.TIWARI, AGED ABOUT 56 YEARS, CHARGEMAN GR.II (T), VEHICLE FACTORY, JABALPUR.**
- 11 **M.P. SINGH, S/O SON OF MR.M.N. SINGH,AGED ABOUT 52 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
- 12 **I.G. GOSWAMY, SON OF MR.S.G. GOSWAMY, AGED ABOUT 57 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
13. **B.N. ROY, SON OF MR.S.N. ROY, AGED ABOUT 57 CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
14. **A.K. AWASTHI, SON OF THE LATE S.C. AWASTHI, AGED ABOUT 57 YEARS, CHARGEMAN GR. II (T) VEHICLE FACTORY, JABALPUR.**
15. **A.K. BOSS, SON OF MR.S.K. BOSH, AGED ABOUT 56 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**

16. **BADRI SINGH, SON OF MR.B. SINGH, AGED ABOUT 51 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
17. **D.D. RAY, SON OF MR.B.B.DAS ROY, AGED ABOUT 56 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
18. **N.K. VISHWAKARMA, SON OF THE LATE M.L. VISHWAKARMA, AGED ABOUT 50 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
19. **B.K. MONDAL, SON OF MR.G.P. MANDAL, AGED ABOUT 58 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
20. **P. CHACKO, SON OF MR.POPPY KURUVILA, AGED ABOUT 57 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
21. **A.L.VISHWAKARMA, SON OF MR.M.P. VISHWAKARMA, AGED ABOUT 51 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
22. **D.G. ROY CHOUDHARY, SON OF MR.S.H. ROY CHOUDHARY, AGED ABOUT 56 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
23. **R.Y. TIWARI, SON OF THE LATE U.S. TIWARI, AGED ABOUT 56 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
24. **P.R. MARTHANKAR, SON OF MR. S.R.MATHANKAR, AGED ABOUT 52 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**

25. **S.S. BAJPAI, SON OF MR.D.P. BAJPAI, AGED ABOUT 54 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
26. **J. CLEMENT, SON OF MR.N.D. JAMES, AGED ABOUT 55 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY JABALPUR.**
27. **ARUN DEOLE, SON OF MR.P.N. DEOLE, AGED ABOUT 53 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
28. **H.R. ROY, SON OF MR.A.R.ROY,AGED ABOUT 51 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
29. **R.N. PATEL, SON OF MR. R.D. PATEL, AGED ABOUT 55 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
30. **M.S. KHAN, SON OF MR.M.D. KHAN, AGED ABOUT 54 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
31. **R.K. GODBOLE, SON OF THE LATE HARI GOVIND, AGED ABOUT 55 YEARS, CHARGEMAN GR.II (T) VEHICLE FACTORY, JABALPUR.**
32. **J.L. MONDAL, SON OF MR.S.P. MONDAL, AGED ABOUT 55 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
33. **U.S. SHARMA, SON OF MR.R.D. SHARMA, AGED ABOUT 58 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
34. **K.L. VYAS, SON OF MR.S.D. VYAS, AGED ABOUT 56 YEARS, CHARGEMAN GR.II (T), VEHICLE FACTORY, JABALPUR.**

35. **R.K. YADAV, SON OF THE LAE J.L. YADAV, AGED ABOUT 55 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
36. **P.J. JOY, SON OF MR.P.C. JOHN, AGED ABOUT 53 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
37. **N.S. ROY, SON OF MR.A.S. ROY, AGED ABOUT 52 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
38. **SMT. KALAWATI AMLANI AGED ABOUT 60 YEARS WIDOW OF SHRI K.L.AMLANI R/O 82 DWARKA NAGAR JABALPUR (M.P.).**
39. **S.S. SHARMA, SON OF MR.N.K. SHARMA,AGED ABOUT 52 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
40. **KULDEEP SINGH, SON OF MR.G.B. SINGH, AGED ABOUT 52 YEARS, CHARGEMAN GR. I (T), VEHICLE FACTORY, JABALPUR.**
41. **B.K. SINGH, SON OF MR. GAYA SINGH, AGED ABOUT 53 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
42. **J.P. GUPTA, SON OF MR.S.D. GUPTA, AGED ABOUT 58 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
43. **K.R. KURMI, SON OF MR.RAMJI PATEL, AGED ABOUT 50 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
44. **OMMEN CHANDEY, SON OF MR.C. OMMEN, AGED ABOUT 52 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**

45. **C.K. SENGUPTA, AGED ABOUT 56 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
46. **S.K. ROY, SON OF MR.B.M. ROY, AGED ABOUT 50 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
47. **P.R. DESHMUKH, SON OF MR.K.R. DESHMUKH, AGED ABOUT 53 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**
48. **S.L. PATEL, SON OF MR.C.L. PATEL, AGED ABOUT 52 YEARS, CHARGEMAN GR. II (T),VEHICLE FACTORY, JABALPUR.**
49. **M.K. SHIVAHARE, SON OF MR.K.C. SHIVAHARE, AGED ABOUT 53 YEARS, CHARGEMAN GR. II (T), VEHICLE FACTORY, JABALPUR.**

.....PETITIONERS

(BY SHRI SANJAY KUMAR AGRAWAL - ADVOCATE)

AND

1. **THE UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF DEFENSE PRODUCTION, NEW DELHI.**
2. **CHAIRMAN THE BOARD OF ORDNANCE, 10, AUCHLAND ROAD, CALCUTTA.**
3. **GENERAL MANAGER VEHICLE FACTORY, JABALPUR.**

....RESPONDENTS

(**BY MS. KANAK GAHARWAR - ADVOCATE**)

Reserved on : 29.03.2022
Delivered on : 19.04.2022

ORDER

1. The petitioners in the instant writ petition have sought for issuance of a writ in the nature of *Certiorari* to quash order dated 20.04.2005 passed in O.A.No.375-2004 by the Central Administrative Tribunal, Jabalpur Bench (hereinafter referred to as “CAT”) with a further prayer to strike down S.R.O.357 of 1979 while commanding the respondents to treat the petitioners similar to the members of other trades by safeguarding their present position along with their pay.

2. The case of the petitioners is that they were employed as Machinist Grade-II and Grinders in Vehicle Factory, Jabalpur. All the petitioners, although were appointed between 1972 and 1973 but at one point of time, they congregated into a trade of Grinders, therefore, the grievance of the petitioners is common. They submit that in the Ordnance Factories and **Ordnance Equipment Factories (Group “C” and Group “D” Industrial Posts) Recruitment Rules, 1979 (hereinafter referred to as the “SRO of 1979”)** were applicable. There were three categories of Grinder i.e. “C”, “B” and “A”. There was a special category “special

Grade Grinder”. There were other trades like Miller, Turner and Fitter etc. and the categories in those trades were “D”, “C”, “B” and “A”. According to them, the Grinder “C” was equivalent to other trade category “D” . Grinder “B” was equivalent to other categories “C”. Grinder “A” was equal to “B” Grade and other trades and Grinder special was equivalent to “A” Grade of other trades. All the petitioners were originally in “C” Grade Grinders. In the year 1974-1975, they were made Grinder “B” Grade. In nutshell, from 1974-1975, Grinder “B” Grade became equivalent to “C” Grade of other trades. The petitioners stated that a person belonging to trade of Miller in “A” Grade is entitled to be promoted as Supervisor “B” Grade, whereas, his equivalent in the Grinder trade holding the designation of Grinder, highly skilled Grade-II continued to remain without being promoted to the post of Supervisor Grade “B”.

3. Petitioners stated that there was discrimination in classification of the Grades. The respondents have created an artificial disparity by an executive order between the Turner and other trades. The Grinders “A” Grade claim the relief to the extent that they should be treated equivalent to the employees of the other category having the chance of promotion as Supervisor “B”. Similarly situated employees had filed petition before the CAT at Calcutta as T.A.No.1361-1986 and T.A.No.1248-1986. The Calcutta Bench of CAT vide judgment dated 30.10.1987 allowed the Original Applications. The Factory Order Part-I dated 07.01.1983 and Factory Order dated 03.01.1984 were struck down. Creation of new

Grade/Posts of Grinders Special Highly skilled by Office order dated 25.1.1980 was also struck down. The respondents in that case challenged the order passed by the CAT before the Hon'ble Supreme Court. The SLP was dismissed.

4. The petitioners, who are belonging to Vehicle Factory, Jabalpur have approached CAT Jabalpur in O.A.No.391-1989 and another O.A.No.421-1989 filed by Grinders belonging to GCF, Jabalpur. On 31.08.1980, CAT Jabalpur decided both the O.As granting similar reliefs as was granted by the CAT at Calcutta to the petitioners therein. Concluding para of CAT order dated 31.08.1990, it was held as under :-

“Hence we direct the respondents to 'grant similar reliefs to the other Grinders who have filed this petition as follows:-

(1) Treating the Grinder 'A' as equivalent as Turner 'A' Fitter 'A', Borer 'A' and Miller 'A'.

(2) The pay of Grinder 'A' shall be fixed in the pay scale of H.S.Grade-II notionally w.e.f. 16.10.81 but actually paid from 31.8.90 the date of this judgment.

(3) Grinders 'A' who were in existence prior to 16.10.1981, the date when the Expert Classification Committee report was implemented by the authorities shall be considered for promotion to the cadre of Supervisor 'B' but without awarding higher pay scales.

(4) Their pay shall be refixed in accordance with the recommendations of the Fourth Pay Commission and arrears calculated and paid to them.

(5) The Grinders in the Special Grade shall be upgrade to H.S.Grade-I w.e.f. 16.10.81 and paid arrears from that date. However, those Grinders of special grade who were in service prior to 16.10.81 shall be considered for promotion to the rank of Supervisor 'A' (Tech)/Chargeman Grade II. (Tech.) by treating them as H.S.Grade-I but without higher pay.

(6) Applicants in the grade of grinder 'A' shall be dovetailed with other 'A' Grade Workman in H.S.Grade-II as per Ordnance Factory Board's order dated 1.11.1977, by counting their service in the grade as equivalent to H.S.grade-II. Their seniority in H.S.Grade-II shall be counted from the date they were designated as 'A' grade.

The seniority of Grinders 'special' and Grinder 'A' be counted for H.S.Grade-I and H.S.Grade-II from the date of assumption of the post in Special Grade and Grade-A respectively.

A review DPC will be held to consider the cases of promotion where due retrospectively from the relevant dates.

This order will technically apply only to such one applicants who were located and posted at the time of filing of the petition within the jurisdiction of this Bench of Madhya Pradesh as writ cannot be issued to other. However, the respondents shall on their own consider the extension of these orders to other similarly placed, within the jurisdiction of Madhya Pradesh and elsewhere in the light of the decisions the cases of A.K.Khanna. (supra) and R.Sambandam (supra).

This disposes off both these petitions O.A.391 of 1989 (H.R.Roy & others vs. U.O.I. & others) and O.A.421 of 1989 (B.C.Jha & others Vs. U.O.I. & others).

Parties shall bear their own costs.”

5. The Union of India challenged the decision of C.A.T Jabalpur before the Hon'ble Supreme Court. Initially, the Hon'ble Supreme Court granted stay against order passed by the CAT, Jabalpur, however, same was later on vacated. In the meantime, Union of India filed a Review Petition No.74-1991 before the Calcutta High Court against T.P.No.1428-86 and T.P.No.1391-86. On 27.11.1992, the Review petitions were dismissed by the High Court. On 21.3.1995, Hon'ble Supreme Court directed to consider the Review Petitions on merits. On 06.1.1997, the Hon'ble High Court of Calcutta allowed the Review Petitions and the judgment dated 30.10.1987 passed by the CAT was recalled and T.P.No.128 and 1361-86 were dismissed. The employees challenged the order dated 06.01.1997 before the Hon'ble Supreme Court and by that time, C.A.No.8088-1995 arising out of the order passed by the CAT, Jabalpur was already pending before the Hon'ble Supreme Court. On 01.04.2004, the Hon'ble Supreme Court vide common order, dismissed Civil Appeal preferred by the employees against the order passed by the Hon'ble High Court of Calcutta and allowed C.A.No.8088-1995 preferred by the Union of India against the order passed by the CAT Jabalpur. However, liberty was granted to the employees to challenge the legality and validity of the SRO of 1979 by filing separate petition, if they are so advised. It was also directed that if any amount is paid to the employees, the same would not be recovered from them.

6. Before the order could be passed by the Hon'ble Supreme Court on 01.04.2004, the respondents already implemented the order passed by the CAT, Jabalpur and convened Review DPC. The petitioners were promoted as Supervisor "B" from amongst Grinders. The post of Supervisor "B" was changed to Chargeman Grade-II. The petitioners continued as Chargeman Grade-II since 1992. As a result of passing of the order by the Hon'ble Supreme Court, the judgment passed by the CAT, Jabalpur stands annulled and the petitioners whose seniority as Grinder equated with Miller, Fitter, Turner and Borer was bound to be disturbed. On 21.04.2005, the respondents while issuing Factory Order No.1628 (Part-II) restored the earlier position of the petitioners which was existing prior to passing of the order by the CAT, Jabalpur.

7. Since, the Hon'ble Supreme Court granted liberty to the petitioners to challenge the SRO, they filed O.A.No.3752004 with a prayer to quash the SRO of 1979 and direct the respondents to allow them to continue on their respective posts. The CAT Jabalpur, vide impugned order did not find any substance in the prayer made by the petitioners and, accordingly, the O.A. has been dismissed. Hence, the petitioners are before this Court in the present writ petition.

8. The learned counsel appearing for the petitioners submitted that the SRO 357 of 1979 is discriminatory. There is no intelligible differentia to create two separate class of different trades. The action of the respondent

is violative of Article 14 and 16 of the Constitution as SRO 357 of 1979 does not include Grinder for promotion alongwith other trades. The reversion of the petitioners would be highly detrimental to their interest and status. A person should be provided promotion on the basis of ACR and the same can be treated as first promotion. By virtue of anomaly so created, there would be two sets of employees; one who have retired and getting the benefit of order passed by the CAT on the basis of their last drawn salary, they would receive the pension of higher amount, whereas, those who are retiring after the order passed by the Hon'ble Supreme Court, would be getting lesser amount of pension. He places reliance on a decision of the Hon'ble Supreme Court in the case of *Federation of All India Customs and Central Excise Stenographers and others Vs. Union of India and others*¹ and *State of U.P. and others Vs. J.P.Chaurasia and others*².

9. On the other hand, learned counsel appearing for Union of India has opposed the prayer. She submits that SRO 357 of 1979 has already been superseded by SRO 98-E of 1989, which has further been superseded by SRO 185 of 1994. According to her, as per SRO, the method of recruitment, promotion, grade structure of industrial employees of each trade and grade were indicated in detail. The point score obtained by Grinder, Miller and Borer alongwith other earlier designation and pay

¹ (1988) 3 SCC 91

² (1989) 1 SCC 121

scales has been placed on record to show that the Grinder Special in the pay scale of Rs.320-400 was equivalent to Turner “A”, Miller “A” and Borer “A” in the pay scale of Rs.320-400. Similarly, Grinder “A” in the pay scale of Rs.260-350 was equivalent to Turner “B”, Miller “B” and Borer “B” in the pay scale of Rs.260-350. The point scores and the pay scales were awarded to each of the trade on the basis of valid reasons which have been explained in detail. She further submits that petitioners are not entitled for any relief when the Hon’ble Supreme Court has already taken a view that the petitioners are not entitled for equivalence which was granted by the CAT Jabalpur. She placed reliance on the decision of Hon’ble Supreme Court in the matter of *Punjab State Power Corporation Limited Vs. Rajesh Kumar Jindal and others*³ and *State of U.P. and others Vs. J.P.Chaurasia and others*².

10. We have heard the learned counsel for the parties and perused the record.

11. The President of India in exercise of powers conferred by the proviso to Article 309 of the Constitution of India has made SRO 357 of 1979 which was issued on 10.12.1979 and the same was called as “Ordnance Factories and Ordnance Equipment Factories (Group “C” and Group “D” Industrial Posts) Recruitment Rules 1979. The facts of the case show that the Third Pay Commission after examining scales of various

³ (2019) 3 SCC 547

categories of workers in Ordnance Factories reduced the then existing 19 scales for Industrial Staff in various defence establishments to 05 scales varying from semi-skilled to highly skilled Grade-I categories. At the same time, the Third Pay Commission also recommended for setting up of an Expert Classification Committee (ECC) to carry out proper classification of scales and job evaluation of posts. The said ECC was set up by Government of India in October, 1974 and it was presided over by a retired Judge of the High Court and also included expert members from the department as well as representatives of recognized Staff Union. This Committee visited 23 Ordnance factories out of 33 in order to study the job on the spot. It prepared a detailed procedure for job analysis which consisted of skill (education, experience and training and job skill manual as well as mental); Efforts (physical, mental and visual); Responsibilities (machinery and equipment, material safety of soothers and work of others). On the basis of analysis of job, each trade and grade was awarded a point score by the ECC. In its report submitted in the year 1979, the ECC recommended 09 pay scales. The Government examined the report of ECC. It disagreed with the recommendation that the total number of pay scales should be 09 instead of 05 as recommended by the Third Pay Commission which has already been implemented. The Government took the decision on 16th October, 1981 that there should be only 05 scales for industrial workers and this was also the demand of the two Federations of employees. Accordingly, on the basis of the point score, the pay scales were created which are as under :-

<u>‘Point Score</u>	<u>Scale</u>
389 and above	Rs. 380-560/-
329 – 388	Rs. 330-480/--
251 – 328	Rs. 260-400/-
206 – 250	Rs 210-290/-
upto 205	Rs. 190-232/ -

12. The CAT at Calcutta vide order dated 06.01.1997 in Review Application No.74 of 1991, while recalling its earlier order dated 30.10.1987 in Para 34 to 39 has found as under :-

“34. Therefore, it is clear that these scales were introduced in terms of Govt. order of the same date issued implementation of ECC recommendation. The work of ECC is an extension of 3rd Pay Commission which was meant to rationalize the pay and designation structure based on overall assessment of the situation and scientific job evaluation. In view of these reports, a large number of previously pre-existing scales had to be reduced. The need was to fit various posts on new scales on the basis of point earned by each category. In doing so, because of merger of scales, some of those who were in the lower scale entered the higher scale, while those already in the higher bracket who had not scored the number of points required to move the next higher scale remained in the same scale and got bracketed in that scale. This is inevitable in any such scheme of rationalisation and the petitioners of TA or for that matter any

other employer cannot make any legitimate grievance on this score.

35. *the main thrust of the petitioners' arguments in the was that the line or reasoning in the impugned judgment of 1967 is that by such reclassification, the previous judgment of the Hon'ble Calcutta High Court in the No. CR 2433-w/74 as decided by Hon'ble Mr. D.K.Sen on 8.11.79 by relying on earlier decision of Division Bench of the same Court in FMAT NG 183/77 has been negated. In those decisions, the Hon'ble Colcutta High court held that individual concerned would be included in the dovetailed seniority list in order of date of their seniority respective grades on the basis of pay point seniority. But as already analysed above, the classification of or chance of respective designation and pay scale had been decided by the Govt. the basis of expert committee's recommendations like 'Pay Commission and subsequent ECC. Since these are on the basis of expert evaluation of job specifically done, the petitioners of the TAs could not have legitimate about the same. In fact such rationalisation or classification of pay scale and designation has been subsequently upheld by the Hon'ble Supreme Court in the case of Defence Employees Union & Ors Vs. UOI & Ors in civil Appeal No. 4024/88 by its order dt. 11.7.95, o copy of which has been annexed as Annexure-iv (a) by the review petitioners while filing their written submission.*

36. *The other observation of this Bench of the Tribunal in the impugned judgment of 1987 is that the Union of India in its order dt. 6.1.84. had clubbed Grinders "A" and Grinders "B" together and abolished job specification But judgment simultaneously mentioned that "on receipt of the recommendation of ECC, Gr. A and "B" Grinders were merged as their point score fell in the same group of 251-328 corresponding to the pay scale of Rs. 260-400/- which was awarded to this combined grade with effect from 16.10.81. So the above finding contradicts the observations made*

in the impugned judgment already alluded to and this is an error apparent on the fact of it in the impugned judgment.

37. Now the impugned judgment of 1987 also held that it had not been possible to locate any job contents of Grinder Special and Grinder HS Grade in the report of 2 High Power Committee viz. ECC and Anomaly Committee and as a result in the impugned judgment is has been held that no reasonable justification for such classification was, in existence.

38. well, vide Annexure-111 to the written submission Mr. A.Ali, the ld. counsel for the review petitioners has produced before us copies of job description and job specification of various posts including Grinder Special and Grinder HS etc. as done by ECC. By consulting the old case records of TAS from our record room, we find that at least the ECC job description and job evaluation for Grinders, Gr.A and Grinder Special had been submitted before the Tribunal in 1987 prior to passing of the impugned 1987 judgment. so, obviously the aforesaid observation in the impugned judgment of the Tribunal contains apparent error on the face of facts available on record and on the basis of argument advanced by the official respondents at the time of original hearing of TAs.

39. On the basis of Govt. of decision recommendations of ECC the following pay scales were granted to the Grinders and other categories:

	<u>Pre-revised</u>	<u>Revised</u>
HS Grade of all Trades	Rs.380 – 560/-	Rs.380 – 560/-
Grinder Spl., Machinist Spl., Fitter (Genl.) A, Miller A Etc.	Rs.320 – 400/-	Rs.330 – 480/-
Grinder A, Machinist A,	Rs.260 – 350/-	Rs.260 – 400/-

Fitter (Genl.) B, Miller
B etc.

Grinder B, Machinist B, Rs.210 – 290/- Rs. 260- 400/-
Fitter (Genl.) C,
Miller C.

It is, therefore, clear that there was no disparity amongst the various trades during implementation of ECC recommendations.

13. A perusal of SRO 357 of 1979 would show that the relevant entries regarding posts, pay scales, educational and other qualifications of the concerned posts varies from each other. The CAT in its impugned order has noted that Grinder “B” Grade at S.No.300 has pay scale of Rs.210-290/-. Its educational qualification prescribed is only primary while for Fitter “B” Grade (Boiler) the pay scale is Rs.260-350/-. For this post Middle standard is required. Similarly, at S.No.146-300 though both the posts relate to “B” Grade but their pay scales are different and for these posts, the educational and other qualifications are specifically mentioned in para-7 of the SRO.

14. So far as the decisions of Hon’ble Supreme Court in the matter of *Federation of All India Customs and Central Excise Stenographers Vs. Union of India and others* ¹ cited by the learned counsel for the petitioners is concerned, the Hon’ble Supreme Court has held that there is an element of value judgment by those who are charged with the administration in

fixing the scales of pay and other conditions of service. Differentiation in implementing the award or the recommendations of Pay Commission without rational basis may amount to discrimination. But so long as such value judgment is made *bonafide*, reasonably on an “*intelligible criterion*” which has a rational nexus with the object of differentiation such differentiation will not amount to discrimination. In the said case, the Hon’ble Supreme Court found that the differentiation was based on rational nexus with the object sought to be achieved. In the case of ***Federation of All India Customs (supra)***, the petition filed under Article 32 of the Constitution filed on behalf of Stenographers (Grade-I) who were attached with the Officers seeking parity with the pay scale of Stenographers who are attached to the Joint Secretaries and Officers above that rank, was denied to the petitioners of that case.

15. In another decision relied upon by learned counsel for the petitioners in the matter of ***State of U.P. and others Vs. J.P.Chaurasia and others***², is concerned, the same principles are laid down. It has been held that differentiation in pay scales depends upon evaluation of duties and responsibilities; quality and quantity etc. are the relevant material. The courts normally should not compare and evaluate all those factors on the basis of affidavits and pleadings and the matter of this nature should be left to the executive who should appoint an expert body for the purpose. So far the case of ***State of U.P. and others (supra)*** is concerned, the question before the Hon’ble Supreme Court was whether it is permissible to have

two pay scales in the same cadre for persons having same duties and same responsibilities. The High Court of Allahabad answered the said question in negative. It was held by the Hon'ble High Court that it would be violative of the constitutional rights of "*equal pay for equal work*". The Hon'ble Supreme Court after relying on various decisions on the subject has held that the concerning Rules made a proper classification for the purpose of entitlement to higher pay scale. The High Court has completely overlooked the criterion provided under the Rules and accordingly, the judgment of the Hon'ble High Court was set aside.

In both the decisions cited by the learned counsel for the petitioners, the claim of Equal Pay for Equal Work was denied to the employees.

16. The Hon'ble Supreme Court in the matter of *Punjab State Power Corporation Limited*³ has held that "Ordinarily, the scale of pay is fixed keeping in view the several factors i.e (i) method of recruitment; (ii) level at which recruitment is made; (iii) the hierarchy of service in a given cadre; (iv) minimum educational/ technical qualifications required; (v) avenues of promotion; (vi) the nature of duties and responsibilities; and (vii) employer's capacity to pay, etc. It has further held that for determining equivalence of posts, the factors required to be considered are (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualification, if any, prescribed for recruitment to the post; and (iv) the salary of the post.

17. Keeping in mind the scope of interference in the matter of parity of pay, we do not find that the SRO 357 of 1979 calls for any interference as the same is based on various factors as discussed in the preceding paragraphs. The impugned order dated 21.04.2005 passed by C.A.T Jabalpur in O.A.No.375-2004 is affirmed. The present writ petition does not have any substance, hence the same is hereby dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MKL