

NAIN SINGH BHAKUNI AND ORS.

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v.

UNION OF INDIA AND ORS.

JANUARY 8, 1998

[S.B. MAJMUDAR, S. SAGHIR AHMED AND M. JAGANNADHA RAO. JJ.]

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Constitution of India, 1950—Articles 14, 16 and 39—Service—Parity of Pay-Scales—Disparity in educational qualifications between two sets of employees—Appellants, draftsman working in Central Water Commission (CWC) and draftsmen in CPWD doing similar type of work—Held, no parity of treatment in giving benefit of retrospective revision of pay scales to CPWD draftsmen and not to CWC—Service Law.

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Article 16—Tribunal granting relief in separate fact situations to Employees in other department who were similarly circumscribed as draftsmen in C.P.W.D—Cannot be pressed in service almost automatically by the appellant in peculiar facts of the case wherein they are not similarly situated as their counters parts in C.P.W.D.

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Article 136—Appeal—Discrimination regarding extension of retrospective benefit of pay scales—Not canvassed for consideration—Raises disputed question of fact—Such questions cannot be raised before Supreme Court for the first time.

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The draftsmen in Grades I, II and III in CWC and CPWD were enjoying identical pay scales form 1st January, 1947 to 20th June, 1980. However, the pay scales of draftsmen of CPWD were revised upwards on 20th June, 1980 giving effect notionally from 1st January, 1973 and benefit of arrears from 28th and 29th July, 1978 The appellants Employed in CWC made number of representations to the Respondent authorities Claiming parity The Government of India issued Office Memorandum on 13th March, 1984, whereby all draftsmen Grade. I, II and III working in all the Government Departments similarly qualified were required to be placed and given revised pay scales. This was with effect from 1st May, 1982 notionally from 16th November, 1978 and actually from 1st November, 1983 in view of the award given by the Board of Arbitrator to CPWD Draftsmen in 1980. Thereafter as per amendment of Recruitment Rules on 27th November, 1987 pay scale of appellants were revised and brought at par with CPWD from 9th November,

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A 1987 with qualification also at Par.

The appellants prayed before CAT, that benefit of pay scales should be given to them from 1st January, 1973 instead of 9th November, 1997 partly notionally and subsequently actually and they were extended the actual and notional benefit of pay scale as per Official Memorandum of 13. 3. 1984.

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In appeal to this court it was contended on behalf of the appellants that the notional benefit of revised pay scales of draftsmen from 1st January, 1973 to 16th November, 1978 instead of from 13th May, 1982 to 31st October, 1983 be given to them.

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Dismissing the appeal, this Court

HELD: 1. There was clear-cut difference in recruitment qualifications between the two sets of employees in CPWD on the one hand and CWC on the other and thus there cannot be any automatic linkage and parity of treatment for retrospective revision of pay scales. The tribunal was right in considering the equities of the case granting to the appellant the benefits of Office Memorandum of 1984 for retrospective revision of pay scales from 1987 as the educational qualifications were brought on par so far as the appellants were concerned as compared to their counter parts in CPWD.

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UOI & Ors. v. Debashu Kar & Ors., [1995] Supp. 3 SCC 528, referred to.

Jaspal & Ors. v. State of Haryana & Ors. etc., [1988] 3 SCC 354, distinguished. [52-F-G; B-C]

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2. The judicial orders passed against employees in other departments on the basis of separate fact situations which were found established in their cases by the Tribunal cannot be pressed in service almost automatically by the appellant in the peculiar facts of the present case wherein they are not similarly situated as their counter parts in CPWD. [56-B]

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3. The contention as to discrimination regarding extension of retrospective benefit of pay scale was never canvassed for consideration before the tribunal. Therefore, the disputed question of fact for consideration for the first time could not be raised before this court. [55 E-G]

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4. The relief was given to CPWD draftsmen by the Board of Arbitrators and was accepted by the authorities and if this relief became available to the

appellants who were identically situated and were doing same type of work as draftsmen in other departments of Government. The question whether they had gone for similar arbitrator or not would pale into insignificance. [50 B-C] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2985 of 1991. B

From the Judgment and Order dated 21.2.91 of the Central Administrative Tribunal, New Delhi in Original Application No. 1 of 1989.

M.N. Krishnamani and P. Narasimhan for the Appellants.

N.N. Goswami (Ms. Binu Tamta) for Mrs. Anil Katiyar for the Respondents. C

The following Order of the Court was delivered by :

S.B. MAJMUDAR, J. This appeal by grant of special leave under Article 136 of the Constitution of India has brought in challenge the judgment and order rendered by the Central Administrative Tribunal. Principal Bench at New Delhi in O.A. No. 1 of 1989, filed by the 429 original applicants before the Tribunal insofar as the Tribunal, as not granted them full relief as prayed for therein. In order to appreciate the grievance of these appellants it will be necessary to note a few introductory facts. D E

Background facts

The appellants are working as Draftsmen in the Central Water Commission ('CWC') for short). It is not in dispute that the said Commission is functioning under the Ministry of Water Resources Government of India. According to these appellants the Third Pay Commission appointed by the Central Government has observed that the pay scales allowed to the Draftsmen were rather low and they were required to be upgraded as per the recommendations of the said Commission. The case of the appellants is that upto 20th June 1980 the draftsmen in Grades I, II and III in CWC and Central Public Works Department ('CPWD' for short) were enjoying identical pay scales from 1st January 1947 to 20th June 1980 on the basis of First, Second and Third pay Commission's recommendations. However the pay scales of draftsmen of CPWD were revised upwards on 20th June 1980 giving effect nationally from 1st January 1973 and actual benefits of arrears from 28th and 29th July 1978. The appellants contend that they were doing similar type of H

A work as draftsmen in CPWD and they were also entitled to the similar treatment and revised pay scales, notional and actual, on the same lines as those granted to their counterpart draftsmen in CPWD. They made number of representations to the respondent authorities. But they were of no avail. The recruitment rules of appellants were revised somewhere in 1982. The respondent authorities constituted a sub-committee for the purpose of Cadre Review of Draftsman cadre in CWC. According to the appellants the sub-committee recommended that the anomaly created regarding the pay scales of Draftsmen in CWC as compared to Draftsmen in the CPWD shall be rectified and be brought at par with the pay scales awarded by the Board of Arbitration to CPWD draftsmen. But despite these recommendations nothing happened.

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C Ultimately Ministry of Finance issued a Memorandum on 13th March 1984. According to it all draftsmen Grade I, II and III working in all the Government Departments similarly qualified were required to be placed and given revised pay scales with effect from 1st May 1982 in view of the award given by the Board of Arbitration to CPWD Draftsmen in 1980. That thereafter the Recruitment Rules of draftsmen were amended on 27th November 1987 and consequently the pay scales of the appellants were revised and brought at par with CPWD draftsmen from 9th November 1987. The appellants grievance is that the parity of pay scales should have been given to them on the same lines on which benefit of revised pay scales was given to the CPWD draftsmen from 1st January 1973 partly nationally and subsequently actually. The appellants, therefore represented that their pay scales should be revised on the same lines as the revised pay scales of CPWD draftsmen with effect from 1st January 1973 instead of from 9th November 1987. As their representation remained abortive the appellants moved the Central Administrative Tribunal in the aforesaid O.A. No.1 of 1989. The relief which they prayed for was to the effect that the applicants may be given revised pay scales with effect from 1st January 1973 instead of 9th November 1987 as ordered to be paid by the respondents. The said prayer was based on the ground that the draftsmen Grade I,II and III in CWC were discharging similar type of duties as the draftsmen in CPWD and that their qualifications were also substantially similar and consequently they were entitled to be given the same treatment regarding revised pay scales as was given to their counterparts in CPWD. The Tribunal after hearing the parties came to the conclusion in paragraph 9 of the impugned judgment that it is not necessary for the posts in question to be exactly identical for allotment of the same scale of pay. All that is required is that the responsibilities and duties attached to the posts should be broadly comparable and similar in nature. The Tribunal further noted that the recruitment

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qualifications of the draftsmen in CWC were brought at par with draftsmen in CPWD from 9th November 1987 as by that date the conditions of qualifications were relaxed. In this connection the Tribunal noted two salient features emerging on the record of the case. Firstly it was observed that CPWD draftsmen were awarded notional revision of pay scales from 1st January 1973 and arrears from 28th/29th July 1978 in view of the award of the Board of Arbitration before which the dispute raised by the CPWD draftsmen was placed for adjudication. There was no such development so far as the CWC draftsmen were concerned. The second distinguishing feature noted by the Tribunal was that the respondent authorities on account of the O.M dated 13th March 1984 issued by the Ministry of Finance had granted revision of pay scales notionally from 13th May 1982 to draftsmen in other Government departments with benefit of actual payment with effect from 1st November 1983. Accordingly similar benefit was made available to the appellants by the Tribunal. As noted earlier the appellants being partly aggrieved by the aforesaid decision in their O.A. have filed the present appeal on grant of special leave to appeal seeking notional benefit of revised pay scales of draftsmen from 1st January 1973 to 16th November 1978 instead of from 13th May 1982 to 31st October 1983 as granted by the Tribunal. Their further claim is about actual benefits of arrears of revised pay scales to be given to them not from 1st November 1983 as granted by the Tribunal but from 16th November 1978 upto 13th May 1982. We may mention at this stage that in the meantime the respondent authorities had also moved a cross-Special Leave Petition No. 10992 of 1991 being aggrieved by that part of the judgment and order of the Tribunal by which the aforesaid limited relief was granted to the appellants. A Bench of this Court by order dated 26th July 1991 granted special leave to appeal to the petitioners in S.L.P. (C) No. 11268 of 1991 out of which the present appeal arises and directed that the said appeal be tagged on with S.L.P.(C) No. 10992 of 1991 moved by the respondents against the very same impugned judgment. Leave was granted on 22nd July 1991, in that Special Leave Petition also and it was registered as Civil Appeal No. 2936 of 1991. Both the appeals, therefore, were to be heard simultaneously. When the hearing of these appeals earlier reached before a Bench of this Court in January 1995 learned counsel for the appellants stated that several authorities had granted identical relief from 1st January 1973 and pay from 1978 to similarly situated draftsmen. The counsel of the Union of India was, therefore, directed to look into the matter and see if the statement was accurate so that uniformity was maintained. Thereafter when these appeals reached for further final hearing before this Court on 8th April 1997 cross-Civil Appeal No.2936

A of 1991 was not pressed by learned counsel for the respondents who stated that the impugned order of the Tribunal was already implemented and there was a decision of this Court in the case of *Union of India and others v. Debashis Kar and others*, [1995] Supp. 3 SCC 528 which clearly got attracted against the present respondents who were the appellants in that cross-appeal.

B Therefore, thereafter there remained in the arena of contest only the present civil appeal.

C In this appeal Under Secretary, Central Water Commission has filed counter affidavit on behalf of respondent no 1 on. 2nd November 1992. We will refer to this counter hereinafter. A further affidavit was also filed on behalf of respondent no. 1 in compliance with direction of this Court issued on 9th January 1995 and reiterated a latter order of this Court dated 8th April 1997 wherein the respondents were required to put on record with affidavit whatever material they might have collected in connection with the uniformity of pay scales granted to draftsmen in other Government departments. The appellants in their turn have filed reply-affidavit of appellant no. 1 on behalf of the

D appellants.

E When this appeal reached further hearing before this Court on 12th November 1997 we were informed that judgment in the case of *Debashis Kar* (supra) which has been relied upon by this Court in dismissing the respondents cross-appeal against the very same judgment of the Tribunal insofar as the relief was granted to the appellants is pending scrutiny before the larger Bench of three learned Judges. Consequently this appeal was adjourned awaiting the decision of the larger Bench. Subsequently it was brought to our notice that the larger Bench by its decision dated 2nd December 1997 dismissed those referred Civil Appeal Nos. 11477-11479 of 1995 and reiterated the decision

F of this Court in the case of *Debashis Kar* (supra). Three Judge Bench confirmed the decision of the Tribunal in the impugned judgments before them by observing that the Tribunal had taken into consideration educational qualifications for the posts of Draftsmen Grade II and Grade III in the Defence Research and Development Organisation (DRDO) and Draftsmen Grade I and II in the CPWD and held that the appellants in DRDO were not entitled to the same pay scales. It was also observed that after considering the qualifications which were prescribed for appointment for the post of Draftsmen Grade II and Grade III in the DRDO and comparing the same with the qualifications prescribed for the posts of Draftsmen Grade III, Grade II and Grade I, this court was of the view that the Tribunal had rightly negated

G the claim of the appellants before them. All the appeals were accordingly

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dismissed. Thereafter when this appeal reached further hearing before us learned senior counsel for the appellants Shri M.N. Krishnamani as well as learned senior counsel for he respondents Shri N.N. Goswami raised the following contentions in support of their respective cases. A

Rival Contentions B

Shri Krishnamani learned senior counsel for the appellants, submitted in support of the appeal that the Tribunal had already come to the conclusion on facts that the draftsmen in CWC were carrying on the similar type of work as their counterparts in CPWD. It has also observed that from 1987 their qualifications were also brought on par. In fact according to the learned senior C counsel for the appellants the pay scales of the draftsmen in CWC were at par with those in CPWD at least from 1st January 1947 to 20th June 1980 and thereafter even though the pay scales of draftsmen grades I,II and III in CPWD got revised upwards and the pay scales of the appellants remained the same by 1987 they were also brought on par. Therefore, for the interregnum also appellants were required to be treated at par from the point of view of pay scales as their counterparts in CPWD. Learned senior counsel for the appellants in this connection submitted that the Tribunal has given a Limited relief to the appellants only on the ground that draftsmen in CPWD has got the benefit of an award while the appellants had not got such benefit. But that is a fortuitous circumstance. On the principle of Equal Pay for Equal Work the appellants were entitled to be treated at par with draftsmen of CPWD. E Even otherwise the sub-committee of the Department had already recommended parity of pay scales for the appellants on the same lines as granted to the draftsmen in CPWD. It was further submitted that substantially there was no difference in the qualifications of the draftsmen working in CWC as compared to those working in CPWD and consequently the Tribunal had erred in not F granting full relief to the appellants as prayed for. It was also submitted that decision of this Court in *Debashis Kar* (supra), placing reliance on the O.M of 1984, had considered limited grievance of parity asked for by the respondents in that case in the light of the O.M. and that they had never prayed for further relief, on the lines of CPWD draftsmen, of notional benefit from 1st January G 1973 and actually from 16th November 1987 so far as the revised pay scales were concerned and consequently the aforesaid decision of this Court or for that matter the latter three Judge Bench decision also would not come in the way of the appellants as there was no basic disparity in the light of the recommendations of the Third Central Pay Commission, between draftsmen in CWC and CPWD when these recommendations were accepted by the H

A authorities, so far as the CPWD draftsmen were concerned. Consequently when the draftsmen in CWC were doing the same type of work and were having substantially the similar qualifications for recruitment there was no reason why similar treatment on the principle of Equal Pay for Equal Work should not be given to the appellants as was given to their counter parts in CPWD.

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Learned senior counsel Shri Krishnamani for the appellants next contended that despite O.M. of 1984 authorities of the Central Government had given retrospective benefit of pay scales for a larger period to similarly situated draftsmen working in other Government departments and there was no reason for the respondents to deny such similar treatment in connection with the implementation of the same O.M. to the appellants. He sought to rely upon various instances of different departments in which said benefit was given.

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Learned senior counsel, Shri Goswami, for the respondents on the other hand submitted on behalf of respondent no. 1 that the nomenclature of the appellants was different from that of their counterparts in CPWD. That their qualifications of recruitment were also different at least till 1987 when they were brought on par and, therefore, they were not entitled to be given any relief on the principle of Equal Pay for Equal Work. However because of the O.M. of 1984 the Tribunal has granted the relief on the same lines as directed by the O.M. to be paid to draftsmen in all other Government departments, therefore, there was no reason for the appellants to claim any better right specially when during the relevant period from 1973 to 1982 and even upto 1987 the qualifications of the appellants as draftsmen in CWC were different from those of the draftsmen Grade I,II and III in CPWD. Therefore, the appellants cannot automatically claim any parity with the pay scales of those draftsmen for that period. They formed a separate class of employees. Thus there was no discrimination meted out to the appellants by the authorities in giving them pay scales as assumed by the Tribunal but as the decision of the Tribunal against the respondents has become final, learned senior counsel at this stage accepted whatever relief was given by the Tribunal to the appellants. But in his submission no further relief could be given to the appellants.

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Learned senior counsel for the respondents joined issue also on the alternate contention of Shri Krishnamani, learned senior counsel for the appellants that despite the O.M. of 1984 further relief was given to various

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draftsmen in other Government departments who were similarly situated. He submitted that whatever relief was given to them was on account of some of the decisions of the Tribunal which had to be obeyed by the respondents and they centered round their own facts. That no such contention was canvassed before the Tribunal by the appellants. In this connection he invited our attention to the averments made in the additional affidavit filed on behalf of respondent no.1 in May 1997. He, therefore, submitted that their cases were not comparable with those of the appellants and consequently there was no question of any discrimination on that ground.

Points for Consideration

In view of the aforesaid rival contentions the following points arise for our consideration :

1. Whether the Tribunal was in error in not granting the revised pay scales to the draftsmen of CWC notionally from 1st January 1973 to 16th November 1978 and actually by way of arrears of revised pay scales from 16th November 1978 to 13th May 1982.
2. In any case whether O.M. of 1984 was diluted by the respondent-authorities in the cases of similarly situated draftsmen working in other Government departments and whether on that count also the appellants are entitled to similar relief of retrospective grant of benefits notional as well as actual.

We shall deal with these points seriatim.

Point No. 1

Whether in error in granting Renue Pay Scale So far as this point is concerned the Tribunal in the impugned judgment has clearly noted that the recruitment qualifications of draftsmen in CWC were not at par with the qualifications of draftsmen of Grade I,II and III in CPWD and they were brought on par only from 9th November 1987. It is of course true that despite that the Tribunal had granted additional relief to the appellants by way of notional rise in the pay scales and, therefore parity of pay scales from that day had become operative. The Tribunal noted that in view of the fact that O.M. of 1984 had given hike in pay scales retrospectively from 13th May 1982 to 31st October 1983 notionally and from 01st November 1983 actually in the case of draftsmen in other departments same relief could be given to the

A appellants. That order in favour of the appellants has become final. The appellants want further relief as noted earlier., So far as that part of the relief is concerned the Tribunal has given two reasons for denying that relief. Firstly because the CPWD draftsmen had gone before the Board of Arbitration which had recommended such relief in their favour while the CWC draftsmen had not approached such Board of Arbitration and secondly because their educational qualifications were different. The first ground given by the Tribunal for distinguishing the case of these two sets of employees, in our view, is not well sustained. We agree with learned senior counsel for the appellants that merely because the appellants had not gone to the Board of Arbitration, if the relief given to the CPWD draftsmen by the said Board of Arbitration which was accepted by the authorities became available to the appellants who were identically situated and were doing the same type of work as the draftsmen in other departments of the Government, question whether they had gone for similar arbitration or not would pale into insignificance. However so far as the second ground, on which the Tribunal gave aforesaid limited relief to the appellants, is concerned we find the same to be well sustained.

D The reason is obvious. Even if the appellants may be having the same scales like the CPWD draftsmen prior to 1965 as submitted by learned senior counsel for the appellants and even assuming that the parity of pay scales was on the basis of almost identical recruitment qualifications a sharp cleavage both in connection with the pay scales as well as educational qualifications for recruitment of these two sets of employees arose at least after 1965 so far as educational qualifications went and though their pay scales remained the same upto 1980 thereafter even the pay scale parity was also disrupted. The case of the appellants for notional benefit from 1st January 1975 and actual benefit from 16th November 1978 will have to be examined in the light of the nature of educational qualifications which were required for recruiting draftsmen in CPWD on the one hand and draftsmen in CWC on the other. It would also be required to be noted, as averred in the counter affidavit dated 14th October 1992 filed on 2nd November 1992 in paragraph 31 at page 104 of the paper book, that the comparison made by the appellants with draftsmen of CPWD is quite misleading inasmuch as even the nomenclature of draftsmen Grade,III,II and I which were prevalent in CPWD were not prevalent in CWC unit the issuance of notification dated 6th August 1986 and 9th November 1987. Even that apart, so far as the educational qualifications were concerned the Comparative Statement of Recruitment Rules at pages 193 which is Annexure II to the Affidavit of May 1997 of Shri B.R. Sharma on behalf of respondent no.1 shows that before the arbitration award of 20th June 1980, in CPWD there were three grades of draftsmen Grade III, draftsman Grade II

and draftsman Grade I while in CWC the corresponding cadres were of Tracer, Jr. Draftsman and Sr. Draftsman. So far as draftsmen Grade III with whom parity of pay scale of Tracers in CWC is sought the recruitment qualifications were different as seen from the said annexure. To be recruited as draftsmen Grade III in CPWD two years' diploma in draftsmanship was required while for a tracer in CWC for a direct recruit matriculation plus two years experience in tracing was required. In CPWD draftsmen Grade II consisted of employees who could be promoted 100% from amongst draftsmen Grade III with three years service and draftsmen Grade I in CPWD which was a further promotional post could be obtained by draftsmen Grade II with eight years service. While on the other hand so far a Jr. Draftsmen in CWC were concerned who were on the same pay scale upto 20th June 1980 with draftsmen Grade II in CPWD and with whom parity of pay scale is sought by the appellants retrospectively, tracers could be promoted upto the extent of 75% by promotion from qualified tracers holding two years diploma in draftsmanship with three years service or having passed departmental examination with total six years service while so far as Sr. Draftsmen in CWC who were having parity of pay scale with Draftsmen Grade I in CPWD prior to 20th June 1980 were concerned, Junior Draftsman in CWC could be promoted to the post of Sr. Draftsman if he had three years experience. Thus experiencewise as well as qualificationwise there was a sharp difference in the cadres of draftsman Grade III at grassroot level in CPWD and Tracer at grassroot level in CWC and their channels of further promotions from these two grassroot level cadres in both these establishments also required different weightage of experience. It could not, therefore, be said that qualificationwise the draftsmen in CWC at the base level or in the higher echelons of service were identically situated as compared to their counterpart draftsmen Grades III, II and I in CPWD. Consequently the general recommendations for the hike in pay scales as made by the Third Central Pay Commission which were adopted with necessary changes by the Government authorities in their application to draftsmen in different services under the Union of India could not be found fault with on the touchstone of Article 14 of the Constitution of India. On the findings reached by the Tribunal whatever maximum benefit could be made available to the appellants is already granted by the Tribunal by treating them at par with draftsmen of other departments for the purpose of hike in pay scales notionally from 13th May 1982 and actually from 1st November 1983 on the basis of the aforesaid O.M. of 1984. A mere look at the said O.M. which is at page 148 of the paper book being Annexure R-4 to the counter affidavit filed on behalf of respondent no. 1 by Shri P.C. Jain shows that the President was pleased to decide that the scales of pay of draftsmen Grade III, II and I in offices/Departments of Govt. of India,

A other than the Central Public Works Department, may be revised as above provided their recruitment qualifications are similar to those prescribed in the case of draftsmen in Central Public Works Department. Those who did not fulfil the above recruitment qualifications were to continue in the pre-revised scales. It was further directed that the benefit of this revision of scales of pay would be given notionally with effect from 13.5.1982 and actual benefit was

B to be allowed with effect from 01.11.83. It becomes at once clear that for getting the benefit of that O.M. the employees similarly situated as draftsmen in CPWD had to show that their recruitment qualifications were similar. In the case of the appellants the said similarity was obtained only in 1987. Therefore strictly speaking even the notional benefit and the actual benefit ordered to

C be given by the O.M. to identically situated draftsmen in other Government departments would not have been made available to the appellants. But the Tribunal considering the equities of the case and having held that at least from 1987 the educational qualifications were brought on par so far as the appellants were concerned as compared to their counterparts in CPWD granted to the appellants the benefit of O.M. of 1984 for retrospective revision of pay

D scales on the same lines as granted to similarly situated draftsmen in other Government departments. To grant any further relief to the appellants going beyond the directions of the O.M. would create a situation wherein the appellants would get more favourable treatment as compared to their counterparts in other Government department and that would result in reverse

E discrimination in favour of appellants. It is also interesting to note that though this O.M. was very much on the record of the case before the Tribunal and on which reliance was placed by the respondents no effort was made by the appellants to challenge that O.M. either before the Tribunal or even in S.L.P. before this Court. The appellants pitched their case only on the ground of discrimination vis-a-vis CPWD draftsmen who, according to them were

F almost similarly circumscribed as the appellants. It is, of course, true that the Tribunal has observed in favour of the appellants that they were doing the same type of work as their counterparts in CPWD, but that by itself is not sufficient. If there was clear-cut difference in recruitment qualifications between the two sets of employees in CPWD on the one hand and CWC on the other

G there cannot be an automatic linkage and parity of treatment for retrospective revision of pay scales as sought to be pressed in service by Learned senior counsel for the appellants.

In this connection we may profitably refer to the decision of this Court in *Debashis Kar* (supra) to which one of us S. Saghir Ahmad, J., was a party.

H In that case that Tribunal had granted parity of treatment to draftsmen

working in ordnance factories as well as army base workshops in EME so far as rise in their pay scales on the same lines as the hike given to their counterparts in CPWD by the Government Memorandum dated 13th March 1984 was concerned. It was observed that the pay scales fixed on the basis of First, Second and Third Central Pay Commissions showed that tracers in ordnance factories had all along been treated equivalent to tracer/draftsman Grade II in CPWD and draftsman in ordnance factories had all along been treated as equivalent to Assistant Draftsman/Draftsman Grade II in CPWD and accordingly they were entitled to the benefit of O.M. dated 13th March 1984. The said decision therefore, upheld the action of the authorities based on the aforesaid O.M. It is this O.M. which has been given effect to by the Tribunal in favour of the present appellants. Under these circumstances, in our view, no more relief on the facts of this case as discussed by us, could be granted to the appellants then what is granted by the Tribunal to them.

We may also usefully refer to the decision of a three member Bench of this Court rendered in Civil Appeal Nos. 11477-11479 of 1995 on 2nd December 1997 wherein the draftsmen employed in the Defence Research Development Organisation Ministry, of Defence were found not to be entitled to parity of treatment as was made available to the draftsmen Grade I and II in CPWD even in the light of the O.M. dated 13th March 1984 as their educational qualifications were different. In the light of the ratio of the aforesaid judgment of three member Bench of this Court, therefore, it must be held that strictly speaking full benefit of the O.M. of 13th March 1984 would not have been available to the appellants as their educational qualification at the relevant time were different. But as the Tribunal has given them that benefit and which order has become final the appellants would not stand to lose that benefit. But in any case they are not entitled to further hike in the pay scales either notionally or actually beyond this limit fixed by the said O.M. of 1984.

Learned senior counsel for the appellants invited our attention to a decision of this Court in the case of *Jaipal and others etc. v. State of Haryana and others etc.*, [1998] 3 SCC 354 for submitting that even different educational qualifications would not by itself be a criterion to deny equal pay for equal work to the employees otherwise similarly circumscribed. In the aforesaid decision it was noted in para 9 of the Report that squad teachers possessed JBT certificates and many of them were graduates but minimum qualification for squad teachers was also matric. Similarly minimum qualification for instructors was matric but many of the petitioners were graduates and some of them were trained teachers possessing JBT certificates. As the

A minimum educational qualifications for these two sets of employees were similar they were held entitled to equal treatment. The facts of the present case, as we have noted earlier are different. The minimum educational qualifications at grassroot level for entry in service in CWC for tracers, re-designated from 1987 as draftsmen Grade III, were different from the educational qualifications of their counterpart draftsmen Grade III in CPWD till 1987. The aforesaid decision, therefore, cannot assist the learned senior counsel for the appellants.

Before parting with discussion on this point we may briefly refer to written propositions submitted by learned counsel for the appellants in support of the appeal. It is submitted that admittedly Draftsmen Grade I,II and III in CPWD and in CWC were treated as equals upto 20th June 1980 and they are treated as equals w.e.f. 13th May 1982 . If they were equals for 40 years before and are equals for all time to come after 1982, how can they be unequals during his short interval of 1 year and 11 months alone? The question that is posed assumes that they are being treated as equals after 1982. In fact as we have seen above, upto 1997 qualificationwise they were not equals but only because the Tribunal stretched a point in favour of the appellants and gave them the benefit of O.M. of 1984 it cannot be said that qualificationwise they became equals all throughout even prior to 1982 . So far as the question about prospective effect of revision of pay scales of CPWD and CWC draftsmen is concerned because they became equals qualificationwise at least from 1987 prospective effect was being given to their pay scales at least from that time onwards. So far as retrospective application was concerned appellants remained unequals as compared to draftsmen in CPWD between 1982 and 1987 and it is only because of the application of O.M of 1984 that they were given the benefit by the Tribunal which could not be further enhanced in their favour. So far as the submission in connection with the revision of pay scales fixed by the Third Central Pay Commission with effect from 1st January 1973 is concerned the said revision granted to CPWD draftsmen could not automatically have been granted to draftsmen in CWC whose educational qualifications during the relevant period in dispute were not the same. The submission based on the nature of work, duties, functions and responsibilities being the same, would not advance the case of the appellants any further as their qualifications were not on par till 1987, as seen earlier. As discussed earlier it is true that one of the reasons given by the Central Administrative Tribunal to deny benefit of revised pay scales from 1978 to 1982 to CMC draftsmen only because CPWD people had gone to Board of Arbitration is not sustainable. However the ultimate conclusion to which the Tribunal reached

could be sustained on the ground that qualification wise the draftsmen in CWC at least at grassroot level could clearly be distinguished as a separate category as compared to that of the draftsmen under CPWD at grassroot level. The submission that difference in educational qualification should not be a discriminating factor for a truncated period cannot be sustained for the simple reason that the period got truncated only because the Tribunal stretched a point in favour of the appellants by narrowing the gap for the short period by giving retrospective benefit of pay scales to the appellants both notionally and actually from 1982-83 though the difference in educational qualifications for recruitment at grassroot level so far as draftsmen in CWC were concerned remained upto 1987. The submission based on the difference between draftsmen Grade III in CWC and CPWD so far as educational qualifications were concerned though was confined to Grade III draftsmen only even, in promotional avenues, as we have seen earlier there was a clear distinction so far as requirements for promotional eligibility even to higher grades were concerned during the relevant time. Consequently in the light of these clear distinguishing features between the two cadres of draftsmen in CWC and CPWD which are well established on record no useful purpose could be served by remanding the matter to Central Administrative Tribunal as lastly submitted in these written submissions. The first point for determination is consequently answered in the negative against the appellants and in favour of the respondents.

Point No. 2

So far as this point is concerned learned senior counsel for the appellants was very sanguine in his contention that despite the limited retrospective effect given to the rise in pay scales to draftsmen employed in other departments of the Government as per O.M of 1984, in many departments of the Central Government similarly situated draftsmen were given further retrospective benefits of the rise in pay scales both actual and notional and, therefore, at least on this ground the appellants can be said to be discriminated against. This contention in the first instance was never canvassed for consideration before the Tribunal. Therefore, it would raise a disputed question of fact for consideration of this Court for the first time in these appellate proceedings. But even leaving aside this aspect of the matter this contention is tried to be repelled by learned senior counsel for the respondents, placing reliance on the additional affidavit of Shri B.R. Sharma for respondent no.1 filed on 9th May 1997. In the said affidavit it has been clearly averred that so far as employees in other departments are concerned various orders of the

- A Tribunal had required the respondents to give them the said benefit and which orders have become final. It is, therefore obvious that on merits the Tribunal had held in favour of those concerned employees in other departments that they were similarly circumscribed as the draftsmen in CPWD and on those peculiar facts these reliefs were given to them. In the present case such similarity of qualifications of employees was not available to the appellants as found by the Tribunal itself. We fail to appreciate how judicial orders passed against employees in other departments on the basis of the separate fact situations which were found established in their cases by the Tribunal or other judicial authorities could ever be pressed in service almost automatically by the appellants in the peculiar facts of the present case wherein they are not similarly situated as their counterparts in CPWD. Consequently it could not be said that the appellants have been discriminated even on this additional ground by the respondents in not giving them further benefit of revised pay scales both notionally and actually than that which was given to them by the Tribunal pursuant to the O.M of 1984 and which relief, as we have seen earlier, was made available to the appellants by even stretching the relief by the Tribunal in their favour. Consequently even the second contention is not found sustainable on merits and stands rejected.

These were the only contentions canvassed in support of the appeal and as they fail the inevitable result is that the appeal fails and is dismissed. There will be no order as to costs in the facts and circumstances of the case.

N.J.

Appeal dismissed.