

A UNION OF INDIA & ORS.

v.

DINESHAN K.K.  
(C.A. No. 25 of 2008)

B JANUARY 4, 2008

**[C.K. THAKKER AND D.K. JAIN, JJ.]**

C *Service Law – Pay scales – Parity in – Rank of 'Radio Mechanics' in Assam Rifles – Claim of parity with their counterparts in other paramilitary forces – Disparity arising due to initial anomaly in the Fourth Pay Commission irrespective of difference in their powers, duties and responsibilities – Disparity admitted by the authorities – Held: The Radio Mechanics were entitled to parity in pay scale with their counterparts in other paramilitary forces – Denial of parity by the authorities is 'irrational arbitrary and violative of Article 14 of the Constitution – Constitution of India, 1950 – Article 14 – Doctrine of equal pay for equal work.*

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E *Constitution of India, 1950 – Articles 14, 16 and 39 (d) – Doctrine of equal pay for equal work – Nature and applicability of – Held: Initially it was introduced as a part of Directive Principles, later assumed status of fundamental right – The doctrine has no mathematical application in every case of similar work.*

F *Judicial Review – Of pay fixation – Held: Equation of pay being complex, is generally left to the Executive and expert bodies – However, judicial review is permissible, where the employee is treated unjustly and arbitrarily by State action or inaction.*

G **By letter dated 10.10.1997 by the Ministry of Home Affairs of Government of India notifying that President of India was pleased to rationalize the rank structure and pay scales of non-gazetted cadre of central police organizations. In February 1998, Directorate of Assam**

Rifles brought to the notice of the Ministry that disparity in the service conditions of certain category of personnel including the rank of Radio Mechanic had arisen and recommended re-designation of Radio Mechanic and Head Constable in Assam Rifles as Warrant Officer and also for replacement of pay scale of Rs. 4000-6000 to bring them at par with their counterparts in other paramilitary forces. The Ministry by letter dated 3.3.1998 informed them that they could redesignate the Head Constable ( Radio Mechanic) as Warrant Officer provided their pre-revised and revised pay scales were identical to the pay-scales of their counterparts in CRPF and BSF. The disparity could not be resolved. On 24.4.2001, Director General of Assam Rifles submitted a report to the Government, with regard to the progress on pay anomaly cases. As there was no positive response from the Government, one of the Radio Mechanics issued a Notice of Demand to the Government and also to Director General of Assam Rifles praying for giving effect to the Office Order dated 10.10.1997. By order dated 26.12.2001 the Government rejected the recommendation made by Director General of Assam Rifles.

Respondents working in the rank of Radio Mechanic in Assam Rifles filed writ petition. High Court, allowed the same. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1 The doctrine of 'equal pay for equal work' was originally propounded as part of the Directive Principles of the State Policy in Article 39(d) of the Constitution. Having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of 'equal pay for equal work' has assumed status of a fundamental right. [Para 9] [107-G, 108-A, C]

*D.S. Nakara and Ors. vs. Union of India* 1983 (1) SCC 305 – followed.

A *Randhir Singh vs. Union of India and Ors.* 1982 (1) SCC 618 – relied on.

B 1.2 Initially, the said principle was being applied as an absolute rule but realizing its cascading effect on other cadres, in subsequent decisions of this Court, a note of caution was sounded that the principle of equal pay for equal work had no mathematical application in every case of similar work. It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the Executive and expert bodies like the Pay Commission etc. It has been emphasized that a carefully evolved pay structure ought not to be ordinarily disturbed by the Court as it may upset the balance and cause avoidable ripples in other cadres as well. [Para 10] [108-D, E]

D *Secretary, Finance Department and Ors. vs. West Bengal Registration Service Association and Ors.* 1993 Supp (1) SCC 153; *State of Haryana and Anr. vs. Haryana Civil Secretariat Personal Staff Association* 2002 (6) SCC 72 - referred to.

E 1.3 It will not be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the Executive, the Court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the Executive or the Legislature. When there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification of posts is ex-facie irrational, arbitrary or unjust, it is open to the Court to intervene. [Para 10] [108-F, G; 109-A, B]

H *State of Haryana and Ors. vs. Charanjit Singh and Ors.*

206 (9) SCC 321 – relied on.

*State Bank of India and Anr. vs. M.R. Ganesh Babu and Ors.* 2002 (4) SCC 556; *State of Haryana and Anr. vs. Tilak Raj and Ors.* 2003 (6) SC 123; *State of Haryana and Ors. vs. Jasmer Singh and Ors.* 1996 (11) SCC 77; *Tilak Raj Orissa University of Agriculture and Technology and Anr. vs. Manoj K. Mohanty* 2003 (5) SCC 188; *Government of W.B. vs. Tarun Roy and Ors.* 2004 (1) SCC 347 – referred to.

2.1 The administrative authorities having admitted in their affidavit the ‘apparent disparity’ and ‘anomaly’ in the pay scales of Radio Mechanics, could not be permitted to perpetuate apparent discriminatory differentiation in the pay scales because of the disparity in pre-revised and revised scales of the personnel of Assam Rifles prior to the recommendations of the Fourth Pay Commission, irrespective of the identity of their powers, duties and responsibilities with other paramilitary forces. In view of the total absence of any plea on the part of the Union of India that Radio Mechanics in other paramilitary forces were performing different or more onerous duties as compared to the Radio Mechanics in Assam Rifles, the decision of the Government was clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution. [Para 20] [115-G, H; 116-A, B]

2.2 It is admitted by the petitioners that: (i) all the paramilitary forces, including Assam Rifles are at par with each other and (ii) there was apparent ‘disparity’ in the pay scales of the personnel of Assam Rifles with their counterparts in other central paramilitary forces. The differentiation in the pay scales of the two paramilitary forces is sought to be achieved not on the ground of dissimilarity of academic qualification or the nature of duties and responsibilities but only on the ground that there was ‘initial anomaly’ in the Fourth Central Pay Commission Report. The counter affidavit filed by Union of India does not even attempt to explain how the case of

A the HAV/RM in Assam Rifles is different from that of Radio Mechanics in other central paramilitary forces. [Para 18] [114-G, 115-D]

B 2.3 In the light of the admitted factual position, the question of examination of external comparisons, internal relativities and other factors, to be kept in view for job evaluation, considered to be a complex issue to be studied only by expert bodies, does not arise. As a necessary corollary, the issue as to whether there is a complete or wholesale identity between the said paramilitary forces, does not survive for consideration. [Para 19] [115-E-F]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 25 of 2008.

D From the final Judgment and Order dated 11.2.2005 of the High Court of Gauhati (Agartala Bench) in W.P. (C) No. 497/2001.

B. Dutta, A.S.G., Sunita Sharma and Sushma Suri for the Appellants.

E Ranjit Kumar, K.V. Vishwanathan, Hiren Dasan, Kalyan Bhaumik, Dharendra Kumar Misra and Mrs. Sarla Chandra for the Respondent.

The Judgment of the Court was delivered by

F **D.K. JAIN, J.:** 1. Delay condoned.

2. Leave granted.

G 3. This appeal by the Union of India and the Director General of Assam Rifles arises out of the judgment and order dated 11<sup>th</sup> February, 2005 rendered by the Gauhati High Court in WP (C) No.497 of 2001. By the impugned order, while allowing the writ petition, directions have been issued that the permission granted by the Union of India vide its letter dated 3<sup>rd</sup> March, 1998, to re-designate the rank of Havildar (Radio Mechanic) as Warrant Officer as recommended by the Ministry of Home Affairs shall be carried out and the pay scale as admissible to

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their counterparts in the Central Reserve Police Force (CRPF) and the Border Security Force (BSF) shall be granted from the same date.

4. The nub of the grievance of the writ petitioner, working in the rank of a Radio Mechanic in the Assam Rifles was that the Ministry of Home Affairs and the Director General of Assam Rifles having accepted in principle that the members of the Assam Rifles, should be given the same rank and pay structure as was given to other central paramilitary forces, yet the same had been denied to them. It was pleaded that as the Ministry of Home Affairs had conveyed its decision to rationalize the rank structure of non gazetted personnel of central paramilitary forces vide order dated 26<sup>th</sup> January, 1998, equal pay structure in other ranks, including the Radio Mechanics in the Assam Rifles could not be denied. His further grievance was that after the implementation of the Fourth Pay Commission, the pay of the Havildar/GD and Head Constable/Radio Mechanic was fixed in the pay scale of Rs.975-1660, without any discrimination between the general duty and technical categories but the discrimination surfaced when higher pay scale of Rs.1200-2040 was given to the Radio Mechanics working in the BSF, denying the same pay scale to the Radio Mechanics in the Assam Rifles. It was also pointed out that the Radio Mechanics working in the Delhi Police organization had been given a much higher pay scale on 10<sup>th</sup> October, 1997 which was being denied to the similar rank holders in the Assam Rifles.

5. The writ petition was contested by the Union of India. In the counter affidavit filed on its behalf, it was stated that on the recommendation of the Fourth Pay Commission, with effect from 1<sup>st</sup> January, 1986, the Assam Rifles personnel had been granted revised pay scales and allowances entirely on the lines of other central paramilitary forces. However, as the changes in the rank structure were not carried out in the Assam Rifles like in other central paramilitary forces, an 'apparent disparity' in the service conditions of certain category of personnel including the rank of Radio Mechanic had arisen. It was also pointed out that the Assam Rifles Directorate had brought this disparity to the notice

A of the Ministry of Home Affairs in February, 1998, and had recommended the re-designation of Radio Mechanic and Head Constable in Assam Rifles as Warrant Officer and for replacement of pay scale of Rs.4000-6000 to bring them at par with their counterparts in other central police organizations. It  
B was stated that in response to the said recommendation, the Ministry of Home Affairs vide letter dated 3<sup>rd</sup> March, 1998, had informed the Assam Rifles that they could re-designate the Head Constable (Radio Mechanic) as Warrant Officer provided their pre-revised and revised pay scales were identical to the pay  
C scales of their counterparts in CRPF and BSF. However, the re-designation of the ranks could not be carried out in the light of the said communication as there was 'disparity' between the pay scales of a Radio Mechanic in Assam Rifles and their counterparts in CRPF and BSF. It was conceded that though  
D the academic qualification for recruitment to the post of Radio Mechanic in Assam Rifles as well as in CRPF and BSF was the same yet there was 'disparity' in the revised pay scales between the Assam Rifles and the said two other paramilitary forces. The claim of the petitioner for higher pay scales on the lines of the pay scales of Delhi Police organization was seriously  
E contested on the ground that the Assam Rifles being a central police organisation, it could not claim parity with Delhi Police organization, which was not a central paramilitary force.

6. Taking note of the admission on the part of the Union of  
F India that there was disparity between the pay scales of the members of the Assam Rifles and similarly ranked personnel of other paramilitary forces, the High Court felt that it would be unreasonable and discriminatory if the pay scales given to Radio Mechanics in CRPF and BSF were denied to the Radio  
G Mechanics in Assam Rifles, when the qualifications and service requirements in all the three organizations were identical. Consequently, the High Court issued the aforementioned directions, which are questioned in this appeal.

7. Mr. B. Dutta, learned Additional Solicitor General,  
H appearing for the Union of India contended that the direction

given by the High Court is manifestly contrary to the settled legal position, enunciated by this Court in several decisions that pay fixation is essentially an executive function, ordinarily undertaken by an expert body like the Pay Commission, whose recommendations are entitled to a great weight though not binding on the Government. It was argued that the recommendations of an expert body are not justiciable since the Court is not equipped to take upon itself the task of job evaluation, which is a complex exercise. In support of the proposition, reliance is placed on two decisions of this Court in *S.C. Chandra & Ors. Vs. State of Jharkhand & Ors.*<sup>1</sup> and *Union of India & Ors. Vs. Hiranmoy Sen & Ors.*<sup>2</sup>

8. Mr. Ranjit Kumar, learned senior counsel, appearing on behalf of the respondent, on the other hand, submitted that the petitioners having themselves admitted that there was an anomaly in the pay scales of the personnel of Assam Rifles, particularly, the Radio Mechanics, as compared to their counterparts in other paramilitary forces, the High Court was fully justified in giving the impugned directions. It was pointed out that, in fact, the Director General, Assam Rifles, who is one of the petitioners in the present appeal, had himself recommended to the Ministry of Home Affairs that the 'anomaly' in the pay scales of the Radio Mechanics should be rectified. Learned counsel submits that it is unfair on the part of the Director General to take a somersault and oppose the direction given by the High Court which is in consonance with his recommendation. Learned counsel, however, stated that the respondent was not pressing for parity with the personnel of the Delhi Police.

9. The principle of 'equal pay for equal work' has been considered, explained and applied in a catena of decisions of this Court. The doctrine of 'equal pay for equal work' was originally propounded as part of the Directive Principles of the

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<sup>1</sup> [2007] 9 S.C.R. 130

<sup>2</sup> 2007 (12) SCALE 170



- A State Policy in Article 39(d) of the Constitution. In *Randhir Singh Vs. Union of India & Ors.*<sup>3</sup>, a bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and
- B held that this principle had to be read under Article 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in *D.S. Nakara & Ors. Vs. Union of India*<sup>4</sup>. Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Article 14 and 16, in
- C service jurisprudence, the doctrine of 'equal pay for equal work' has assumed status of a fundamental right.

10. Initially, particularly in the early eighties, the said principle was being applied as an absolute rule but realizing its cascading effect on other cadres, in subsequent decisions of
- D this Court, a note of caution was sounded that the principle of equal pay for equal work had no mathematical application in every case of similar work. It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the Executive and expert bodies like the
- E Pay Commission etc. It has been emphasized that a carefully evolved pay structure ought not to be ordinarily disturbed by the Court as it may upset the balance and cause avoidable ripples in other cadres as well. (Vide: *Secretary, Finance Department & Ors. Vs. West Bengal Registration Service Association & Ors.*<sup>5</sup> and *State of Haryana & Anr. Vs. Haryana Civil Secretariat Personal Staff Association*<sup>6</sup>. Nevertheless, it will not be correct to lay down as an absolute rule that merely because
- F determination and granting of pay scales is the prerogative of the Executive, the Court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is
- G unjustly treated by arbitrary State action or inaction, except to

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<sup>3</sup> (1982) 1 SCC 618

<sup>4</sup> (1983) 1 SCC 305

<sup>5</sup> (1993) Supp (1) SCC 153

H <sup>6</sup> (2002) 6 SCC 72

go on knocking at the doors of the Executive or the Legislature, as is sought to be canvassed on behalf of the appellants. Undoubtedly, when there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification of posts is ex-facie irrational, arbitrary or unjust, it is open to the Court to intervene.

11. In *State Bank of India & Anr. Vs. M.R. Ganesh Babu & Ors.*<sup>7</sup>, a three-Judge Bench of this Court, dealing with the same principle, opined that principle of equal pay is dependent upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. The functions may be the same but the responsibilities do make a difference. It was held that the judgment of administrative authorities, concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court.

12. In *State of Haryana & Anr. Vs. Tilak Raj & Ors.*<sup>8</sup>, it has been observed that the principle of 'equal pay for equal work' is not always easy to apply as there are inherent difficulties in comparing and evaluating the work of different persons in different organizations or even in the same organisation. It has been reiterated that this is a concept which requires for its applicability, complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. It has been emphasized that the problem about equal pay cannot be translated into a mathematical formula.

13. Yet again in a recent decision in *State of Haryana &*

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<sup>7</sup> (2002) 4 SCC 556

<sup>8</sup> (2003) 6 SCC 123

- A *Ors. Vs. Charanjit Singh & Ors.*<sup>9</sup>, a Bench of three learned Judges, while affirming the view taken by this Court in the cases of *State of Haryana & Ors. Vs. Jasmer Singh & Ors.*<sup>10</sup>, *Tilak Raj (supra)*, *Orissa University of Agriculture & Technology & Anr. Vs. Manoj K. Mohanty*<sup>11</sup> and *Government of W.B. Vs. Tarun Roy & Ors.*<sup>12</sup> has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. Inter alia, observing that equal pay must be for equal work of equal value and that the principle of equal pay for equal work has no mathematical application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved.
- D Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the Court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work and equal quality and all other relevant factors are fulfilled.
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- F 14. Tested on the touchstone of the aforementioned broad guidelines and not cast-iron imperatives we are of the opinion that in the present case, on the pleadings and the material placed on record by the parties in support of their respective stands, the High Court was justified in issuing the impugned directions.
- G 15. Vide order dated 10<sup>th</sup> October, 1997 passed by the

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<sup>9</sup> (2006) 9 SCC 321

<sup>10</sup> (1996) 11 SCC 77

<sup>11</sup> (2003) 5 SCC 188

H <sup>12</sup> (2004) 1 SCC 347

Ministry of Home Affairs in pursuance of para 7 of the Ministry of Finance, Department of Expenditure Resolution dated 30<sup>th</sup> September, 1997, it was notified that the President was pleased to rationalize the rank structure and pay scales of non gazetted cadre of central police organizations and as a result of this exercise certain ranks were to be merged and the rank structure was communicated in the order along with the revised pay scales and replacement pay scales. Copy of this order was sent to all the paramilitary forces, including the Assam Rifles. On 22<sup>nd</sup> January, 1998, an office memorandum was issued by the Government of India, Ministry of Home Affairs, by way of a clarification. In the said letter, it was clarified that order dated 10<sup>th</sup> October, 1997 was equally applicable to all advertised categories. In the said letter, direction with regard to the re-designation of the three posts including Head Constable (RM) as ASI in central paramilitary forces along with their replacement pay scales were also ordered. It appears that the disparity in rank and pay in various central paramilitary forces could not be resolved and on 24<sup>th</sup> April, 2001, the Director General Assam Rifles submitted a report to the Government with regard to the progress on pay anomaly cases. Para 4 of the said letter is of some relevance to the issue at hand and it reads as follows:

"Rank and pay of Technical Cadre Person RM. Ptmn, Pharma, and Compounder of AR with the same intake QR for remounts are given the rank of HAV wherein they are counterparts in CPOs are given ASI. The MHA had ordered to submit proposal in directing cadre to cadre comparison with BSF where the rank of ASI is available in other tech and also along with fin implication. The proposal alongwith fin implication has been submitted to MHA and the case is lying with MOF for approval."

16. Having failed to receive any positive response from the Government, one of the Radio Mechanics' issued a Notice of Demand to the Ministry of Home Affairs and Director General of Assam Rifles, inter alia, praying for giving effect to office order dated 10<sup>th</sup> October, 1997 and office memorandum dated 22<sup>nd</sup>

A January, 1998. Vide order dated 26<sup>th</sup> December, 2001, the  
 B Ministry of Home Affairs informed the Director General of Assam  
 Rifles that his proposal had been examined in consultation with  
 Ministry of Finance and it was found that there was no point for  
 comparison of grades and scales of pay for such posts across  
 C various central paramilitary forces. It was stated that the  
 proposed upgradation may disturb relativities of various trades  
 and grades within the Assam Rifles and there was no functional  
 justification for upgrading these posts. It is evident that on  
 rejection of the recommendation made by the Director General  
 of the Force, the respondent herein was left with no option but  
 to approach the High Court for redressal of his grievance.

17. As noted above, the writ petition was opposed by the  
 petitioners herein by filing counter affidavit. For the sake of ready  
 reference, the relevant portions in some of the paragraphs of  
 D the counter affidavit are extracted below:

E "That, with regards to the averments of the petitioner made  
 in the writ petition in paragraph 5, I submit that Assam  
 Rifles personnel were in receipt of pay and allowances on  
 Army analogy with various groups in terms of Group 'A',  
 'B', 'C', 'D', & 'E' to conform to their functional qualitative  
 requirements of these groups which had varying pay  
 scales. I submit that on the recommendation of the fourth  
 pay commission w.e.f. 01.01.1986 for Force had been  
 granted and pay and allowance entirely on the lines of  
 F Central Para Military Forces while no change in the rank  
 structure was carried out and *this difference in rank  
 structure has resulted in an apparent disparity in their  
 service conditions and certain category of personnel who  
 were placed in the erstwhile higher groups including radio  
 G mechanics category have also been deprived of pay  
 scales either at par with their counterparts in the Army or  
 in the Central Police Organisation.*"

H "That, with regard to the averments of the petitioner made

in the writ petition in paragraph 8, I beg to reiterate that Assam Rifles personnel were in receipt of pay and allowances on Army analogy with various groups in terms of group 'B', 'C', 'D', and 'E', to conform to their functional and qualitative requirements of these groups which had varying pay scales in diminishing order. *On the recommendation of the Fourth Pay Commission w.e.f. 1<sup>st</sup> January, 1986 the Force had been granted pay and allowances entirely on the lines of Central Para Military forces shortly called as CPMFs while no change in the rank structure was carried out, and this difference in the rank structure has resulted in an apparent disparity in their service condition.*"

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"That, with regards to the averments of the petitioner made in the writ petition in paragraphs 10 to 13, I beg to submit that on receipt of MHA letter No.27011/1103/97-PF.1/56 dated 22<sup>nd</sup> January, 1998, Assam Rifles Directorate by letter No.A/Pers/5<sup>th</sup> CPC/Vol.III/98 dated 18<sup>th</sup> February, 1998 had taken up a case with HA to redesignate Hav/RM-Gde I & II of Assam Rifles as Warrant Officer and for replacement of pay scale of Rs.4000-1000-6000/- to bring them at par with their counterparts in other Central Police Organisation. I submit that attention of MHA was also drawn regarding placement of Hav/RM Gde – I and II in the lower scale of pay consequent to implementation of IV Pay Commission. In reply to the Assam Rifles Directorate letter the MHA had ruled out vide their letter No.27011/103/97-P.F.1 dated 3<sup>rd</sup> March, 1998 that Assam Rifles can redesignate HC (RM) as Warrant Officer if pre-revised and revised pay scale of Hav(RM) in Assam Rifles are identical to the pay scale of HC(RM) in BSF and CRPF. I submit that the main hurdle in implementing the said order in Assam Rifles is that there is disparity in pay scales of RM in Assam Rifles to that of BSF and CRPF. The Hav(RM) of Assam Rifles were drawing pay scales of

A Rs.975-1660/- w.e.f. 1<sup>st</sup> January, 1986 and replacement  
 scale as given in the 5<sup>th</sup> Central Pay Commission is  
 Rs.3200-4900/- per month whereas in CRPF and BSF  
 the Hav (RM) was drawing pay scale of Rs.1200-30-1560-  
 40-2040/- per month whose replacement scale in the 5<sup>th</sup>  
 B Central Pay Commission is Rs.4000-100-6000/-. *It is also  
 pertinent to clarify here that the qualification of HC(RM)  
 in other Central Police Organisations that of Assam Rifles  
 Hav (RM) is almost par".....*

C .....  
*"As per averment made in Para 13 of the writ petition, the  
 petitioner is seeking higher pay scale viz 5000-150-8000/  
 - admissible to Delhi Police personnel. I submit that since  
 the Assam Rifles is at par with other central police  
 D organization, the demand of the petitioner, for parity with  
 an entirely another department is not possible. In view of  
 the facts narrated above and to bring parity with other  
 central police organization, it is proposed to grant warrant  
 officers rank (Equivalent to Assistant Sub Inspector) to  
 E technical categories including radio mechanics vide  
 Assam Rifles Directorate Letter No.A/Pers/45<sup>th</sup> CPC/Vol  
 III/98/77 dated 6<sup>th</sup> April, 1998 and subsequent queries  
 sought by the MHA has been replied. I submit that MHA  
 has also informed to the LOAR (Liaison Office, Assam  
 Rifles) that the case for introduction of Warrant Officers  
 F rank to technical categories is presently lying with  
 Ministry of Finance (E-III) since 29<sup>th</sup> August, 2000."*

(Emphasis supplied)

G 18. From the afore-extracted paragraphs of the counter  
 affidavit and the resume of correspondence referred to above,  
 it clearly stands admitted by the petitioners herein that: (i) all the  
 paramilitary forces, including Assam Rifles are at par with each  
 other and (ii) there was apparent 'disparity' in the pay scales of  
 the personnel of Assam Rifles with their counterparts in other  
 H central paramilitary forces. In order to rectify this disparity,

Director General Assam Rifles, petitioner No.2 herein, vide his letter dated 18<sup>th</sup> February, 1998 had, in fact, taken up the grievance of the respondent with the Ministry of Home Affairs, inter alia recommending re-designation of Havildar (RM) Gd.-I and II of Assam Rifles as Warrant Officer and for replacement of pay scale of Rs.4000-100-6000 to bring them at par with their counterparts in other central police organization. However, the Ministry of Home Affairs vide letter dated 3<sup>rd</sup> March, 1998 while accepting the said proposal had recommended re-designation of HAV/RM as Warrant Officer but subject to the condition that the pre-revised and revised pay scales of HAV/RM in other paramilitary forces were identical to the pay scales of Head Constable (RM) in CRFP and BSF. Manifestly, in the instant case, the differentiation in the pay scales of the two paramilitary forces is sought to be achieved not on the ground of dissimilarity of academic qualification or the nature of duties and responsibilities but only on the ground that there was 'initial anomaly' in the Fourth Central Pay Commission Report. The counter affidavit does not even attempt to explain how the case of the HAV/RM in Assam Rifles is different from that of Radio Mechanics in other central paramilitary forces.

19. In the present case, therefore, in the light of the admitted factual position, the question of examination of external comparisons, internal relativities and other factors, to be kept in view for job evaluation, considered to be a complex issue to be studied only by expert bodies, does not arise. As a necessary corollary, the issue as to whether there is a complete or wholesale identity between the said paramilitary forces, does not survive for consideration.

20. Thus, the short question requiring our consideration is whether having admitted in their affidavit referred to hereinabove, the 'apparent disparity' and 'anomaly' in the pay scales of Radio Mechanics, the administrative authorities, the petitioners herein, could be permitted to perpetuate apparent discriminatory differentiation in the pay scales because of the disparity in pre-revised and revised scales of the personnel of



- A Assam Rifles prior to the recommendations of the Fourth Pay Commission, irrespective of the identity of their powers, duties and responsibilities with other paramilitary forces. In our considered opinion, in view of the total absence of any plea on the part of the Union of India that Radio Mechanics in other
- B paramilitary forces were performing different or more onerous duties as compared to the Radio Mechanics in Assam Rifles, the impugned decision of the Government was clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution.

- C 21. On a conspectus of the factual scenario noted above, we do not find any infirmity in the impugned directions given by the High Court, warranting interference. There is no merit in this appeal and it is dismissed accordingly with costs.

K.K.T.

Appeal dismissed.