

IN THE ARMED FORCES TRIBUNAL
(REGIONAL BENCH) KOLKATA

APPLICATION NO. T.A. 2/2013

THIS 13TH DAY OF AUGUST, 2015

CORAM : Hon'ble Mr. Justice Devi Prasad Singh, Member (Judicial)
Hon'ble Lt Gen Gautam Moorthy, Member (Administrative)

IC – 35825 K, Brig Balbir Singh(Retd), Son of Late Tehal Singh
R/o 410/1, Flat No.2, New Alipore, Kolkata-700 053

....Applicant

-Vs-

1. Union of India, Service through the Secretary, Ministry of Defence,
South Block, New Delhi – 110 011
2. Engineer-in-Chief
Integrated HQ of MoD (Army)
DHQ PO, New Delhi – 110 011
3. Adjutant General,
Integrated HQ of MoD (Army)
DHQ PO, New Delhi – 110 011
4. Military Secretary
Integrated HQ of MoD (Army)
DHQ PO, New Delhi – 110 011

.....Respondents

For the Applicant : Mr. Rajiv Manglik, Advocate
Ms Manika Roy, Advocate

For the Respondents : Mr. Sandip Kumar Bhattacharyya, Advocate

ORDER

Per Justice Devi Prasad Singh, Member (Judicial):

The present T.A. has been transferred from the Regional Bench of Jaipur (bearing No.OA 155 of 2012) raising dispute with regard to payment of the Grade Pay of Rs10,000/- at par with his Civilian counterpart holding the same post in the Office of the Chief Engineer, Military Engineering Service (in short, MES). The relevant material facts and question of law discussed hereinafter.

2. According to the pleadings on record and as materials placed, the applicant was commissioned on 16th December, 1978 as an officer in the Indian Army. Gradually because of his bright service records, he was promoted to the rank of Brigadier. It is not disputed that the MES is an organization of mixed category of persons, i.e. Military and Civil. The Civilians are drawn from Civil Services of the Central Government from the Group 'A' Engineering post. The head of the Engineering Services is always of the rank of Lt. General. However, different posts of MES include the persons of Civil and Military Services, both. The Government of India's Order dated 6th September 2002 has been brought on record, which shows that the total number of posts earmarked for Military and Civil Services. For the convenience the same is reproduced as under :

"OFFICERS ESTABLISHMENT FOR MES LOWER FORMATIONS

Sl. No.	Appointment	Civil	Mil	Total
1	2	3	4	5
1	Director General of Works(ADG)	2	-	2
2	Chief Engineer (Brig/CE)	18	15	33
3	Addl Chief Engineer (Col/ACE)	26	40	66
4	Staff Officers Grade I			
	(i) Lt Col/SE	96	30	126
	(ii)PBSO	1	-	1
5.	Staff Officer Grade II			
	(i) Maj/EE	118	104	122
	(ii)Maj/SBSO	4	3	7
	(III)Maj/SAO	9	4	13
6.	Staff Officer Grade III			
	(i) Class I Posts Capt/AEE	40	35	75
	(II)Class II posts Capt/AO-I	7	4	11
	-do- Capt/BSO	10	5	15
	(III)Balance (Civilians from (Engr Cadre AE)	72	-	72 "

3. The applicant being Brigadier was chosen for the post of Chief Engineer(MES). The total strength of which is 33. Out of 33 posts, 18 posts had been earmarked for Civilian and 14 posts had been earmarked for Military Services. It has not been disputed that the duties discharged by

persons holding the Office of Chief Engineer, whether it is a Civilian or a Military personnel is squarely the same without any difference. The applicant was posted as Chief Engineer, Shillong Zone in MES in July 2005. After joining he has come to know that the officer of the status of Chief Engineer from the Indian Defence Services of Engineers (In short, IDSE) are granted PB-4 with grade pay of Rupees ten thousand. On the other hand, the officer of the rank of Brigadier joining as Chief Engineer is granted the pay band of Rs8900/-. The extract of pay scale and grade pay as approved for Civilian Personnel has been filed as Annexure A3 to the OA, which has not been opposed while filing Affidavit-in-Opposition.

4. The post of Zonal Chief Engineer in the MES or the Chief Engineer in the rank of Brigadier is a tenure post for the Army Personnel and the post is inter-changeable between the Brigadier rank of Army Officers and the Civilian Officers of the respective organization and vice versa.

5. The applicant was posted as Chief Engineer, Ordnance Factory Board (in short, OFB) in 2006 and after him another officer was posted from IDSE (Civilian) on the same post. In May, 2007 the applicant was posted as Additional Chief Engineer, South Western Command. Being aggrieved with the different pay band, merely on the ground that persons joined on the post of Chief Engineer from IDSE or Military, the applicant approached the Tribunal. It has been submitted that the applicant has no forum for redressal of his grievance being a policy decision taken by the Government.

6. It is well settled law that even the policy decision may be the subject matter, of judicial review in case it is capricious, arbitrary and discriminatory being hit by Art.14 of the Constitution (vide 2008 (2) SCC 672 DDA & Another vs. Joint Action Committee of SFS Flats).

7. Learned Counsel for the applicant while assailing the decision of the Government to different pay band for Armed Forces Personnel and the Civilian for the same work had relied upon the cases reported in **AIR 1982 SC 879 (Randhir Singh vs Union of India)**, **AIR 2007 SC 2509 (Nehru Yuva Kendra Sangathan vs Rajesh Mohan Shukla)**, **2008 (12) SCC 219 (State of**

Kerala vs B. Renjith Kumar & Ors) and SLP (C) No.17419/2009 Union of India vs Rajesh Kumar Gond & Other connected matters decided on 25-7-2013 and submits that the applicant's case is squarely covered by the decision of the Hon'ble Supreme Court and is entitled for declaration as well as order commanding the respondents to pay 'same pay band' and scale to the applicant which is being paid to Civilian (supra).

8. On the other hand, Mr.S.K. Bhattacharyya, the learned counsel for the respondents submits that since the pay scale of the Military Personnel and the Civilian Services correlates to different branches of services (two sources) and the appointment in question is against a tenure post hence the applicant is not entitled for any relief. It is also submitted by the learned counsel for the respondents that Fundamental Rules 9(22), "Permanent Post" means a post carrying a definite rate of pay sanctioned without limited of time, whereas Fundamental Rules 9 (30A) deals with the "Tenure Post" means a permanent post which an individual Government Servant may not hold for more than a limited period. Under the Fundamental Rules 9(16) Military Commissioned Officer means a Commissioned Officer other than a departmental commissioned officer and it does not include a Warrant Officer. According to the learned counsel for the respondents, the Constitution of India envisages a Civilian form of governance, whose service conditions are dealt with in pursuance of Art.309 of the Constitution of India, whereas the service conditions of Armed Forces Personnel are dealt with enactment under Art.246 of the Constitution of India. The Army Officer does not perform duty to a permanent post, while working on the post of Chief Engineer and being a tenure post, he may not be entitled to the same pay band and pay scale. It is submitted that an Army Officer never loses his identity, even while working in the Military Engineering Services. He further advanced his argument by submitting that the report of 6th Central Pay was not within its domain to create any permanent post for Army Personnel.

9. While pressing for relief, the Counsel for the applicant has invited our attention to the recommendation of the 6th Central Pay Commission (CPC) which is reproduced as under :

“Para1.2.21. A mechanism exists for evaluating the duties attached to different posts in an organization which should be used to assess the appropriateness of the existing pay scale (proposed to be substituted by grade pay and pay band) rather than granting a special allowance for performing the normal duties. Performance of duties beyond the normal call should, in the revised scheme of things, result in a higher performance related incentive. The specific problems faced by defence forces personnel (viz. army navy and air force) on account of rigorous of military life are, however, proposed to be compensated by an additional element of pay termed Military Service Pay (MSP).

Para2.2.11. Grade pay will determine the status of a post with (apart from the two apex scales of Secretary/equivalent and Cabinet Secretary/equivalent that do not carry any grade pay) a senior post being given higher grade pay.

Para2.2.13 (vi) Seniority of a post will depend on the grade pay drawn. This will invariably be more for a higher level post. Pay scales will largely become irrelevant for purposes of computing seniority. Thus, the present situation where frequently a junior draws higher salary (albeit in lower pay scale) vis-à-vis his senior because of longer years of service, will no longer be of any essence for purposes of computing seniority.

Par 2.2.22(vi) DA and all allowances, facilities, pension etc. shall be payable on the sum of grade pay and pay band.

2.3.13 The Military Service Pay shall count as pay for all purposes except for computing the annual increment(s). However status of the Defence Forces Officers would be determined by the grade pay attached to their post as is the case with civilians.”

10. It is submitted by the applicant’s counsel that the objection raised by the respondents is not correct as Central Pay Commission was entitled to record its finding on the basis of duty of Armed Forces Personnel.

11. We have considered the arguments advanced by both the parties at length and perused the records.

12. While dealing with the present controversy one strange fact has been brought on record that upto 3rd Central Pay Commission the Military and Civilian Officers were in the same pay band and with effect from 4th Central Pay Commission, this anomaly arose, which seems to have been attempted to be removed in the 6th CPC. It is submitted by the respondents counsel that an amount of Rs6000/- per month are paid to Brigadier for

their Military Service, i.e. the Military Service Pay (MSP) which is for all purposes, except for computation of increment and determination of status.

13. This argument seems to be not sustainable for the reasons that services rendered by the Armed Forces Personnel is a specialized and unique services for the cause of Nation and they sacrifice their life for the sake of the country so that people of the country may lead a peaceful life and sleep and work well without any mental disturbance. Rs6000/- paid as Military Service Pay is not a bounty and seems to have got no concern or linking in case an Armed Forces Personnel is directed to do other works like present one apart from military service, outside cadre.

14. CONSTITUTIONAL PROVISION :

Art.39 of the Constitution of India provides that there shall be equal pay for equal work for both men and women. It further provides citizens, men and women should be treated equally and have the right to adequate means of livelihood. For convenience Art.39 is reproduced as under :

'39. Certain principles of policy to be followed by the State – The State shall, in particular, direct its policy towards securing –

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b)

(c)

(d) that there is equal pay for equal work for both men and women;"

15. The Hon'ble Supreme Court in the case of **Randhir Singh** (supra) while interpreting Art. 39(d) held as under :

“ ‘Equal pay for equal work’ is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional remedies, by the enforcement of constitutional rights. So the petitioner claims; so the petitioner asserts. Article 39(d) of the Constitution proclaims,

as a Directive Principle, the Constitutional goal of 'equal pay for equal work for both men and women'. Articles 14 and 19 guarantee respectively the fundamental rights to equality before the law and equality of opportunity in the matter of public employment and Art.32 provides the remedy for the enforcement of, the fundamental rights."

16. While interpreting Article 39(d) importance must be given to two words, i.e. "equal pay" and "equal work". It means right is flowing from Art.39(d) relates to work done by employees and categorization may be done on the basis of equality of work and not the post. It means it is enough in case different category(source) of employees are posted together on same post and performing the same job/work, then they seem to be entitled for the same pay band.

17. No word or phrase including punctuation of the Constitution may be excluded while considering its effect. The principle of reading down may not be applied to give narrow meaning to the constitutional provisions which gives certain benefits to public individually or collectively. Liberal construction may be given within its ambit keeping in view future development in various fields of human activity (**vide 2004 (2) SCC 510 (Union of India vs Navin Jindal and another).**)

18. However, no provision and indeed no word or expression of the Constitution exists in isolation. They are necessarily related to transforming and in turn being transformed by other provisions, words and phrases in the Constitution [**vide 2011 (4) SCC 36 GVK Industries Ltd vs. ITO.**]

19. The Constitution is a living and organic thing and construed broadly and liberally (**vide AIR 1990 (SC) 781 Goodyear India Ltd Vs State of Haryana**). Broader and liberal construction be applied to secure fundamental right as contained in para III and not narrow or mellow down the fundamental rights of the citizen. Grant of equal pay for equal work does not fetter by post, class or group or establishment. Hence it is not for the Courts to impose any restriction or right with regard to payment of salary on the basis of equal pay for equal work.

20. Apart from above, under Art.39(a) citizen, men and women should have adequate means of livelihood, Pay Band including salary and perks is the source for right to livelihood, right to dignity and equality of life. (vide AIR 2000 SC 988 Chairman, Rly Board vs. Mrs Chandrima Das, 1990 (1) SCC 568 Kubic Darusz Vs Union of India, AIR 1963 (SC) 1295 Kharak Singh Vs State of UP, AIR 1983 SC 803 State of Maharashtra vs Chandrabhan Tale, AIR 1984 SC 802 Bandhua Mukti Morcha vs Union of India. Hence, there cannot be discrimination between two persons who are discharging the same duty in one set up. Otherwise, it shall effect the Fundamental Right of the citizens protected by Article 21.

21. Though Directive Principles are not enforceable by Court, but in case it stretches to the Fundamental Right of the Citizen for protection under Chapter III of the Constitution, order/direction may be issued to the authorities to review the anomaly and to stop discriminatory treatment. Needless to say that Constitution is the mother of law and infringement or violation of the Constitutional guarantee through a policy decision shall not be sustainable on any ground whatsoever.

22 It has not been disputed that the post of Chief Engineer carries the same duty whether it is performed by a military personnel or civilian. The arguments advanced by the learned counsel for the respondents seems to be not sustainable for the reason that Constitutional protection correlates with the payment of salary or pay band and not to the cadre or service from where a person is brought to discharge the duty on a particular post. In case, the work, duties are similar then the source is immaterial and who so ever may be assigned the same duty shall be entitled for same pay and pay band. In the case of **Randhir Singh** (supra), where the pay scale of Driver working in Delhi Police Force, Railway Protection Force and Non-Secretariat Office was having different pay scales, the Hon'ble Supreme Court after taking into account 3rd Central Pay Commission report directed to pay the same pay scale fixing the pay scale of Driver, Police Constable of Delhi Police Force at par with the pay scale of the Drivers of Railway Protection Force on the ground that both of them perform arduous nature of duties.

23. In a case reported in **1987 AIR 2049 (Bhagwan Dass and Others vs Sate of Haryana and Others)**, their Lordships of Hon'ble Supreme Court held that it is established that the work performed is similar, there can be no discrimination with regard to scale of pay on the ground that the mode of recruitment was different or the nature of appointment was temporary. Accordingly, objection of respondents that being a temporary or tenure appointment, the applicant is not entitled for same pay band seems to be not sustainable. The main thrust of the argument of the learned counsel for the applicant is that the pay band as prescribed by the respondents for the same pay band to the officers appointed on the post of Chief Engineer from two sources, i.e. Civil and Military is discriminatory and hit by Article 14 of the Constitution read with Article 21. In a case reported in **(2014) 8 SCC 682 (Subramanian Swamy vs. Director, Central Bureau of Investigation and another)**, while considering the ambit and scope with regard to equality before law, Hon'ble Supreme Court observed as under :

“39. Article 14 of the Constitution incorporates concept of equality and equal protection of laws. The provisions of Article 14 have engaged the attention of this Court from time to time. The plethora of cases dealing with Article 14 has culled out principles applicable to aspects which commonly arise under this Article. Among those, may be mentioned, the decisions of this Court in Chiranjit Lal Chowdhury [AIR 1951 SC 41], F.N. Balsara [AIR 1951 SC 318], Anwar Ali Sarkar [AIR 1952 SC 75], Kathi Raning Rawat [AIR 1952 SC 123], Lachmandas Kewalram Ahuja [AIR 1952 SC 235], Syed Qasim Razvi [AIR 1953 SC 156], Habeeb Mohammed [AIR 1953 SC 287], Kedar Nath Bajoria [AIR 1953 SC 404] and innovated to even associate the members of this Court to contribute their V.M. Syed Mohammad & Company [AIR 1954 SC 314]. The most of the above decisions were considered in Budhan Choudhry [AIR 1955 SC 191].

40. This Court exposted the ambit and scope of Article 14 in Budhan Choudhry as follows :

“It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things

that are grouped together from others left out of the group, and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of the Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure”.

24. In **E.P. Royappa vs State of Tamil Nadu and another (1974 4 SCC 3)**, Hon’ble Supreme Court while considering the basic principles which involves both Articles 14 and 16 of the Constitution observed as under:

“85....Art. 16 embodies the fundamental guarantee that Arts. 14 as there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art. 14. In other words, Art. 14 is the genus while Art 16 is a species, Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any ;attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action an(ensure fairness and

equality of treatment. They require that State action must be based on valent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would :amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the matter comprehends the former. Both are inhibited by Arts. 14 and 16.....”

25. In this case it is not the question of Rupees of thousand or two thousand, i.e. the difference between the persons holding the office of Chief Engineer joined from Civil and Military, but it is also the question of status and representation of two categories of employees in the people’s eye. In case a person is given lesser pay band on the same post, his/her status may be lowered down in people’s eye, which may have adverse public perception to their capability and efficiency. Hon’ble Supreme Court in a case reported in **(2014) 5 SCC 417 (Om Prakash Chautala v. Kanwar Bhan)** has observed as under :

“Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on posterity. It is a nobility in itself for which a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities”.

26. Payment of different salary or pay band to the same category of employees holding same post under one employer amounts to discrimination and shall be hit by Art.14 of the Constitution [vide **1997 (1) SCC 701 (SC & ST Office Welfare Association vs. State of UP)**, **(1995 Supp (2) SCC 246) K. Ravindra Nath vs State of Karnataka, 1999 (4) SCC 756 (Karnlakar and Others vs Union of India)**].

27. It is further well settled proposition of law that equals cannot be treated unequal. Vide **1971 (2) SCC 188 (Md Usman and Others vs State of Andhra Pradesh)**, the Hon’ble Supreme Court held that equality (Article 14) is

attributed not only when equals are treated as unequal but also when unequal treated as equal. In one earlier case reported in **AIR 1964 (SC) 179 (T Devadasan vs Union of India and others)**, wherein the Hon'ble Supreme Court has held that equality provided by Article 14 is equal amongst equals. The aim of the Article 14 is that arbitrary discrimination shall not be made by the State between the citizen and citizen.

28. In a case reported in **LAWS(SC)-2000-8-168 (State of Haryana vs B.L. Gulatti and others)**, while considering the special pay in selection grade, where one of the employees was granted others were not granted, it was held to be discriminatory being irrational, meaning thereby only because the sources are two, but the post is the same with the same nature of duty, there cannot be discrimination in the matter of pay scale or pay band like the case in hand. The Hon'ble Supreme Court in a number of cases held that Special Pay or additional emoluments in addition to regular pay scale does not mean that the persons holding the same post may be discriminated. Where it is paid for the arduous and special nature of the functions to be discharged in a particular organization, their Lordships of Supreme Court held that there is no justification for granting the same to officers transferred to a particular organization and denying them to direct recruits to the same organization merely on the ground that the transferred officers were selected by the Union Public Service Commission through competitive examination. It has further been held by the Hon'ble Supreme Court that where Special Pay is allowed to persons of a particular class should be enforced equally. It has been held further by the Hon'ble Supreme Court that where special pay is attached to certain identified posts in a particular category of posts, only those who are posted against those identified posts may claim the special pay.

29. Further it has been held by Hon'ble Supreme Court that when a public servant is holding two posts he will be entitled to draw the salary of the higher post. In case a Government Servant performs or discharge the same work or responsibility, then a special pay may be sanctioned at par with others. Thus inference may be drawn that in case higher pay band is given to the person joined from Civil side, the same cannot be denied to the person

joined from the Army on the post of Chief Engineer since it shall be a discriminatory order and hit by Art.14 of the Constitution of India [Telecommunication Research Centre Scientific Officers' (Class-I) Association vs Union of India (1987 1 SCC 582); M.P. Singh, Deputy Superintendent of Police, CBI v. Union of India (1987 (1) SCC 592); A.J. Joseph v. Union of India (JT 1996 (1) SC 561); Union of India v. P. Jagdish (JT 1996 (11) SC 241); D.D. Suri v. Union of India (1980 1 SCR 24)]

30. In a case reported in **1988 AIR 1504 (Jaspal & Others vs State of Haryana and others)**, their Lordships of Hon'ble Supreme Court held that if two persons do same type of work under an employer with same responsibility and similar working conditions, the doctrine of equal pay for equal work will apply. It shall not be open to the state to discriminate in paying salary. The State is under a Constitutional obligation to ensure that equal pay is paid for equal work . Article 39(d) contained in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the Chapter of Directive Principles of State Policy, but it is fundamental in nature. Even temporary or casual employee performing the same duties and functions shall be entitled to the same pay as paid to a permanent employee. The relevant portion of the Judgement is reproduced as under :

.....There is no doubt that instructors and squad teachers are employees of the same employer doing work of similar nature in the same department therefore the appointment on a temporary basis or on regular basis does not affect the doctrine of equal pay for equal work. Article 39(d) contained in Part IV of the Constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the Chapter of Directive Principles of State Policy, but it is fundamental in nature. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The doctrine of equal pay for equal work has been implemented by this Court in Ranjit Singh v. Union of India & Ors., [1982] 3 SCR 298; Dhiren Chamoli and ors v State of U.P., [1986] 1 SCC 637 and Surinder Singh & Anr. V. Engineer-in-Chief, CPWD & Ors., [1986] 1 SCC 639. In view of these authorities it is too late in the day to disregard

the doctrine of equal pay for equal work on the ground of the employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee.”

31. The principle followed in the case of Jaipal and Others (supra) have been reiterated by Hon’ble Supreme Court in the case reported in **1990 AIR 883 (Dharwan Distt. PWD Literate Daily Wages Employees vs. State of Kanataka & Ors)**. In case reported in **AIR 1993 SC 286 (State of Madhya Pradesh and ...vs Pramod Bhartiya and Others)**. While interpreting, Hon’ble Supreme Court has again affirmed the principle as followed in the case of Randhir Singh(supra).

32. In **2006 (IX) SCC 406 (K.T. VEERAPPA V. STATE OF KARNATAKA)**, the Hon’ble Supreme Court has reiterated that fixation of pay and determination of parity in duties falls within the executive domain. But it is a settled proposition it may be subjected to judicial review, if the Court find the decision is unreasonable, unjust and prejudicial to a Section of employees.

33. In **2009(9) SCC 574 (State of Punjab and another vs Surjit Singh and Others)** the Hon’ble Supreme Court has reiterated the principle flows from its earlier judgement, namely Union of India vs Mahajabeen Akhtar reported in **2008 (1) SCC 368** whereby it has been held that a large number of factors are to be considered while applying the principles of equal pay for equal work, which includes Educational Qualification, nature of duty, nature of responsibility, nature of method of recruitment. (para 24).

34. A three Judge Bench of Hon’ble Supreme Court in case of **2009(13) SCC 365 (State of Madhya Pradesh and Others vs Ramesh Chandra Bajpai)**, while considering the applicability of the principles of equal pay for equal work, held as under:

“15.....The court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts.”

35. In Civil Appeal No.11527 of 2014 (Arising out of SLP (C) No.11684 of 2012 (**State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** decided on 18th December 2014, their Lordships have also considered equality of pay and revision of amount and observed that where payments have mistakenly been made by the employer in excess of their entitled benefits, that shall not be recoverable, even if they are not entitled for.

36. In **Ramesh Chandra Bajpai** (supra), an equal pay scale was claimed by the holders of two different posts and the Hon'ble Supreme Court has held that the Right of equal pay may be considered keeping in view the different conditions like qualification, nature of work, responsibility, functional need etc.

37 But the present case is better than the cases brought before the Hon'ble Supreme Court, where the principles of equal pay for equal work were considered and applied. In the present case, it is the same post, i.e. the post of Chief Engineer, of the Military Engineering Service filled up from Civil and Army and the applicant's claim is for parity of pay band. As settled by Hon'ble Supreme Court (supra) because of nature of tenure or temporary appointment it shall not come in the way of entitlement of equal pay for equal work. Hence, the applicant seems to be entitled for equal pay band as being paid to the Civilian holding the post of Chief Engineer in the cadre of Military Engineering Service (MES).

38. It is the settled position of law that an equal cannot be treated as unequal, otherwise it shall amount to discrimination and shall be hit by Article 14 of the Constitution of India(supra).

39. Law has been further advanced and Art. 21 of the Constitution of India has been interpreted by the Hon'ble Supreme Court covering different facets of life which includes, quality and dignity, human livelihood and human living. The payment of lesser salary to an employee or officer holding same post, affects the fundamental rights of the employee or officers. Because of lesser salary/pay band the officer/employee shall not be able to lead a life at par with his own colleague.

40. It is unfortunate that if an Army Personnel is posted or required to discharge duty on a post some of which are held by Civilian, they are being

paid lesser salary or pay band though they discharge same duty. Therefore, the action or policy decision of the Government is capricious , discriminatory and unjust and hit by the principle of Art 14 of the Constitution. The applicant seems to be entitled for same pay band which is being paid to his Civil counterpart.

ORDER

41. Accordingly, the OA is allowed with the following directions:
- i) The Respondents are directed to consider the applicant's case for payment of Grade Pay of Rs10,000/- or more, at par with his Civilian Counterpart holding the post of Chief Engineer in Military Engineering service with all consequential benefit.
 - ii) It shall be appropriate for the respondents to consider the cases of others similarly situated persons, keeping in view the observations made in the body of the present order expeditiously to avoid multiplicity of litigations.
 - iii) It is needless to say that whenever a Brigadier or any other officer working in MES returned back to his/her parent cadre, they shall be reverted back to his original pay scale/pay band with consequential benefits.
42. The decision taken by the respondents shall be communicated to the Applicant as well as to the Tribunal within a period of 4 months
43. No order as to costs.
44. Records if any may be returned to the authorities concerned observing all the usual formalities.

LT GEN GAUTAM MOORTHY)
MEMBER(ADMINISTRATIVE)

(JUSTICE DEVI PRASAD SINGH)
MEMBER (JUDICIAL)

tkb

Let a copy of the order be sent to the Chief of Army Staff, the Chief of Naval Staff and the Chief of the Air Staff, New Delhi within a week by the Registry.

LT GEN GAUTAM MOORTHY)
MEMBER(ADMINISTRATIVE)

(JUSTICE DEVI PRASAD SINGH)
MEMBER (JUDICIAL)