

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 15<sup>th</sup> September, 2017*  
*Pronounced on: 1<sup>st</sup> December, 2017*

+ **W.P (C) No. 3174/2004**

**KHAZAN SINGH** ..... Petitioner

Through: Mr.Sudershan Rajan, Adv.

versus

**DTC** ..... Respondent

Through: Mr.Sarfaraz Khan, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT**

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1. There appears, on the face of it, to be so much vacillation, in the stance of the petitioner in the present case from time to time, that it would probably be best to “start at the beginning, and, when we come to the end, stop” – to borrow the timely advice of the Mad Hatter to Alice.

**The Facts**

2. This writ petition is directed against an Award, dated 27<sup>th</sup> June 2003, of the learned Industrial Tribunal, Karkardooma (hereinafter referred to as “the learned Tribunal”). Inasmuch as the other applicants, before the learned Tribunal, have not chosen to challenge the impugned Award, the recital of facts hereinafter, shall be limited to the case of the petitioner. The petitioner was one of four Draftsmen,

employed by the respondent-Corporation, who initialized the industrial dispute wherefrom the present proceedings emanate. There is, however, considerable road to be covered, before we reach the stage of such initialization.

3. The story, in a way, starts with the agitation, by Draftsmen, in the Central Public Works Department (CPWD), for enhancement/upward revision in the scales of pay being drawn by them. The matter was referred, by the Ministry of Labour, to a 3-member Board of Arbitration (hereinafter referred to as “the Arbitral Board”), headed by a learned retired Judge of the Supreme Court, Hon’ble Jaswant Singh, J. It is not necessary to allude to the details of the Award, dated 20<sup>th</sup> June 1980 (hereinafter referred to as “the Arbitral Award”), which came to be delivered by the Arbitral Board; suffice it to state that the operative portion, thereof, read thus:

“Having given its careful consideration to the whole of the material on the record and having examined the merits of the case presented both by the Official and Staff Sites, in the light of the entire material and the arguments advanced by the aforesaid representatives of both sides and having taken into account all other relevant factors, including the special features of the case, the Board gives the following Award: –

1. The Three categories of Draftsmen, viz. Grade III, Grade II and Grade I shall be inducted in the Payscales showed hereunder against each of the aforesaid categories:-

Draftsmen Grade III	-	Rs. 330-560
Draftsmen Grade II	-	Rs. 425-700
Draftsmen Grade I	-	Rs. 550-750

2. The above-mentioned categories of Draftsmen shall be fixed notionally in their respective scales of pay as aforesaid from 1.1.1973 in accordance with the recommendations of the 3<sup>rd</sup> A Commission in respect of weightage and fitment. But for

computation of arrears, the date of reckoning shall be the date of recording of disagreement in the Departmental Council viz. 29.7.1977.

3. The arrears of pay which shall be worked out in accordance with the above-mentioned formula shall be paid to the affected employees within 3 months from the date of the receipt of the Award by the Ministry of Labour.”

It is essential, here, to note that, in the CPWD, there were three grades of Draftsman, i.e. Draftsman Grade III, II and I, who possessed the respective qualifications/experience of matriculation with 1 year’s experience, matriculation with 2 years-diploma in draftsmanship and matriculation with 3-year diploma in Engineering. The position may be depicted in a tabulated manner, as under:-

<b>Post</b>	<b>Qualification</b>	<b>Scale as on date of Arbitral Award</b>	<b>Recommended revised scale as per Award</b>
Draftsman Grade III	Matriculation with 1 year’s experience	260-430	330-560
Draftsman Grade II	Matriculation with 2 year-diploma in draftsmanship	330-560	425-700
Draftsman Grade I	Matriculation with 3-year diploma in Engineering	425-700	550-750

As is clear from the operative portion of the Arbitral Award as reproduced hereinabove, the aforementioned scales were directed to be notionally granted with effect from 01<sup>st</sup> January 1973, with actual arrears to be paid from 29<sup>th</sup> July 1977.

4. The petitioner was, admittedly a matriculate, who, after matriculation, went on, in 1981, to acquire a 2-year diploma in

Draftsmanship. On the basis of the said qualification, the petitioner who, at the time, was employed with the respondent as a conductor applied for, and was appointed, Draftsman (Civil) on 24<sup>th</sup> September 1982, in the scale of Rs. 260-430. Thereafter, on 09<sup>th</sup> November 1982, the pay-scale of the petitioner was raised to Rs.290-480. Neither of these scales is palatable to the petitioner, who asserts that he was entitled to be paid more. How, why, and to what extent, would become clearer from the recital that follows hereinbelow.

5. On 24<sup>th</sup> September 1983, the petitioner was confirmed as Draftsman (Civil), in the respondent-Corporation.

6. On 13<sup>th</sup> March 1984, an Office Memorandum was issued by the Department of Expenditure, Ministry of Finance, conveying the sanction of the Hon'ble President of India to the extension, to Draftsmen Grade III, Grade II and Grade I, in offices and departments of the Government of India, other than the CPWD, to the revised scales as recommended by the aforementioned Arbitral Award dated 20<sup>th</sup> June 1980 in the case of Draftsmen in the CPWD. This was subject, however, to the condition that the recruitment qualifications of such Draftsmen were similar to those stipulated in the case of Draftsman in the CPWD. The benefits, of the revised scale were to be made available notionally with effect from 13<sup>th</sup> May 1982, with actual benefits to be disbursed from 01<sup>st</sup> January 1983. The OM deserves to be reproduced, *in extenso*, as under:

“Subject: Revision of scales of Draftsmen Grade III, II and I in all Government of India offices on the basis of the Award of Board of Arbitration in the case of Central Public Works Department.

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The undersigned is directed to state that a committee of the National Council (Joint Consultative Machinery) was set up to consider the request of the Staff Side that the following revised scales of pay allowed to the Draftsmen Grade I, I and III working in Central Public Works Department on the basis of the Award of Board of Arbitration may be extended to Draftsmen Grade III, II and I in all Government of India offices:-

	<b>Original Sscale</b>	<b>Revised Scale on the basis of the Award</b>
Draftsmen Grade I	Rs.425-700	Rs.550-750
Draftsmen Grade II	Rs.330-560	Rs.425-700
Draftsmen Grade III	Rs.260-430	Rs.330-560

2. The President is how pleased to decide that the scales of pay of Draftsmen Grade III, II and I in Offices/Departments of the Government of India, 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 do not fulfill the above recruitment qualification will continue in the pre-revised scales. *The benefit of this revision of scales of pay would be given notionally with effect from 13.05.1982, the actual benefit being allowed with effect from 1-11-1983.*

3. Hindi version will follow.”

7. On the face of it, the reliance of the petitioner, on the aforementioned OM dated 13<sup>th</sup> March 1984, is misplaced, as para 2 of the said OM clearly states that the decision of the Hon’ble President, as communicated thereby, was that “the scales of pay of *Draftsman*

*Grade-III, Grade II and Grade I* in offices -Department of the Government of India, other than, the Central Public Works Department may be revised as above.....” whereas it is an admitted position that, in the respondent-Corporation, there were no posts of Draftsman Grade III, Grade II or Grade I; instead, there existed only two posts, i.e. of Draftsman and Head Draftsman. Unlike the CPWD, which had three Grades of Draftsman, the respondent-Corporation had only two.

8. Or so has been the factual position conceded *ad idem*, from 1989 till 30<sup>th</sup> September 2017, when the present petition was argued before me. Now, after the river has run dry, it is being sought to be urged, by the petitioner, that there were, in fact, not two, but *three* grades of Draftsmen in the CPWD; more on that, however, later.

9. On 01<sup>st</sup> March 1989, the petitioner and three fellow-workmen employed with the respondent-Corporation addressed a representation, to the Chairman-cum-Managing Director of the respondent, which read thus:

“ The qualification laid down in the D.R.T.A. (Conditions of Appointment and Service) Regulations, 1952 for the post of Draughtsmen is as under:

‘Matric with Diploma

OR

Certificate in Draughtsmanship’ (Civil)

The pay scale attached to this post prior to 1.1.1973 was Rs. 110-5-150-8-190-EB-10-220. This pay scale was revised to 260-8-300-EB-8-340-10-390-EB-10-430 w.e.f. 1.7.1972 vide memo No PLD/2479 dated 7.3.1974. This revision was based on the several

notifications issued by the Central Government and referred to in the said Office Order dated 7.3.1974. In other words it may be stated that this revision was on the basis of the recommendations given by the IIIrd Pay Commission. The DTC subsequently revised this pay scale to 290-480 and again to 322-522 w.e.f. 1.6.1983.

*The DTC made a mistake in adopting the scales of Draughtsmen i.e. 260-430 w.e.f. 1.1.1973. In fact **Draughtsmen (Gr-III)** in Central Government were placed in the scale of Rs. 330-560 w.e.f. 1.1.1973. On the basis of the Board of Arbitration (see a Reference 02 of 1979) Govt of India vide circular No F.5 (59) – E. 111/82 dated 13.3.1984 revised the scale of Draughtsman of different categories as under:*

	<b>Original Sscale</b>	<b>Revised Scale on the basis of the Award</b>
Draftsmen Grade I	Rs.425-700	Rs.550-750
Draftsmen Grade II	Rs.330-560	Rs.425-700
Draftsmen Grade III	Rs.260-430	Rs.330-560

On the other side several Draftsmen of Ordinance Factory Organisation, Ministry of Defence filed an appeal no. 3121/1981 in the Supreme Court. The Supreme Court accepted the appeal and allowed replacement of scale of pay to 425-700 to those draftsmen who were in the scale of Rs. 330-560. The Government of India vide its circular dated 11.9.1987 decided to extend the benefit of judgement to Draftsmen in other Ministries/Departments and decided that those draftsmen who were placed in the pay scale of Rs. 205-280 prior to 1.1.1973 and were placed on the scale of Rs. 330-560 based on the III Central Pay Commission be given the scale of Rs. 425-700 w.e.f. 1.1.1973. The qualifications of the draftsmen in the different cadre in the Central Government are as under:

#### Cadre

- I. Matric plus 1 years experience.
- II. Matric plus two-year diploma in draughtsmanship or its equivalent.
- III. Matric plus 3 years diploma in engineering or its equivalent.

- IV. Degree in engineering or its equivalent.
- V. Degree in engineering or its equivalent with experience.

Since the draftsmen of Grade-II & III were placed in the scale of Rs. 425-700 and the draftsmen in the category of Gr-I were placed in the scale of Rs. 550-750.

We the following Draftsmen working in the Delhi Transport Corporation request you to revise our grades in the scale of Rs. 425-700 w.e.f. 1.1.1973. The following documents in support of submission are also enclosed:

1. Photostat copy of the award of Board of Arbitration (CA – Reference No 2 of 1979).
2. Photostat copy of the circular No 12014 (4)/73-EW-2 dated 10.11.1980.
3. Photostat copy of the circular No F. 5 (59)-E.III/82 dated 13.3.1984.
4. Photostat copy of the circular No F.5 (13)/-E. III/87 dated 11.9.1987.

Thanking you.”

10. Clearly, the claim of the petitioner, and his fellow workmen, as reflected in the above representation dated 01<sup>st</sup> March 1989, was to be extended the scale of Rs. 425-700 w.e.f. 1.1.1973, *being the replacement scale granted to Draftsmen Grade III*, consequent upon the Arbitral Award and the decision, of the Supreme Court, in Civil Appeal 3121/1981.

11. It is an undisputed factual position that the scales of Rs. 330-560 and Rs. 425-700 were replaced, by the 4<sup>th</sup> CPC, to Rs. 1200-2040 and Rs. 1400-2300, respectively w.e.f. 1<sup>st</sup> January 1986. The petitioner, and his fellow Draftsmen in the respondent-Corporation

were, however, placed in a revised scale of Rs. 975-1660, *vide* order dated 8<sup>th</sup> March 1991. This perceived anomaly prompted the petitioner, and his fellow workmen, to address a further representation, dated 29<sup>th</sup> of August 1991, to the respondent, which read as under:

“ We, the following Draftsmen, would like to invite your kind attention to our representation dated 4.7.1991 in this representation, we have brought to the notice of the Corporation that our pay-scales have not been made applicable as to recommendations of the 3<sup>rd</sup> Pay Commission and as per the decision of Board of Arbitration (JCM) (see a Reference No 2 of 1979) and orders issued by the Government of India *vide* Memorandum No F.5 (59)-E.III/82 dated the 13<sup>th</sup> of March 1984. In her memo No PLD-II/Draftsmen/89/7405 dated 24.11.1989, the Administrative Officer (PLD) has intimated to as that it was not possible for the Corporation to consider our demand as the matter for revision of pay structure of the DTC employees was under consideration of the Government of India.

We have noted with great regret that when adopting the pay-scales of IV<sup>th</sup> Pay Commission *vide* memo No PLD-V (465)/91/1146 dated 8.3.1991, no attention has been paid to our said representation in the pay scales in the range of Rs. 975-1660 has been given. We have been demanding our scales at par with a counter-parts in the Central Government right from the date the recommendations of 3<sup>rd</sup> Pay Commission were adopted. We would request you to please look into the matter and rectify wrong done, at the earliest possible, failing which we shall have no other alternative but to seek justice in the court of law.

Thanking you.”

12. Consequent upon the aforementioned recommendations of the 4<sup>th</sup> CPC, the workers of the respondent-Corporation, through the DTC Workers Union, moved WP (C) 320/1987, under Article 32 of the Constitution of India, before the Supreme Court of India, seeking issuance of “a writ of mandamus or direction to the respondent the Delhi Transport Corporation to implement with effect from January 1,

1986 the recommendations of the Fourth Pay Commission as approved by the Government of India to the Central Government employees as per the undertakings given to its employees vide Office Order No. PLD-IX(465)/83/10589 dated September 15, 1983 and DGM (IR)/84/93 dated February 7, 1984.” This writ petition came to be decided on 2<sup>nd</sup> April 1991, the judgment being subsequently reported in and as *D.T.C. Workers’ Union v D.T.C., (1991) 2 SCC 618*.

13. A brief recital of the circumstances in which the aforementioned writ petition came to be filed before the Supreme Court, as they emerge from a reading of the judgment, dated 2<sup>nd</sup> April 1991, passed by the Supreme Court thereon, would be appropriate at this juncture. It appears that, during the pendency of the consideration of the matter by the 4<sup>th</sup> CPC, a Wage Group was constituted by the Government of India for considering the demand for revision of pay scales of employees of the DTC. The said Wage Group recommended revision of pay scales of all Class-III and Class-IV employees of the DTC as an interim measure, pending receipt of the report of the 4<sup>th</sup> CPC. These revised scales, were therefore, in the nature of interim relief. Simultaneously, interim relief was also announced by the Central Government to the employees under it, whereupon certain Unions of the DTC approached the Management opposing the new scales to be introduced in their case and asking for interim relief at par with that announced by the Central Government for its employees. The employees of the Corporation were, in a circular dated 15<sup>th</sup> September,

1982 given the option either to avail the benefit of interim relief and retain their old pay scales, or avail the benefit of revised pay scales as stipulated for the Corporation. It was clarified, to the agitating Unions of the respondent Corporation, that (i) there was absolutely no intention to delink the DTC from the Central Government pay structure and DA pattern arbitrarily or unilaterally, (ii) if the 4<sup>th</sup> CPC granted any further interim relief or benefit before the final report, such benefit would be available to the DTC employees; (iii) the differential in the “head start” now given in the pay scales should be maintained even while implementing the scales recommended by the 4<sup>th</sup> CPC, and (iv) the pay scales recommended by the Working Group would be enforceable for a period of four years or the receipt of report of the Commission, whichever was earlier.

14. It was in these circumstances that the Office Order dated 7<sup>th</sup> February 1984, with reference whereto mandamus had been sought by the DTC Workmen’s Union from the Supreme Court, was issued. The said Office Order, having set out the above facts, reiterated that the differential “head start” given in the revised scales, would be maintained even while implementing the scales recommended by the 4<sup>th</sup> CPC. It was further clarified, by the Office Order, that, while fixing pay in the scales recommended by the 4<sup>th</sup> CPC, employees coming over to the revised pay scales would be given due benefit of Central Government Interim Relief, so as to ensure that they were not a disadvantage because of their having opted for the revised scales.

15. The Supreme Court, dealing with the issue, ruled thus, in paras 6 and 7 of the judgment as reported *in DTC Workmen Union (supra)*:.

“6. A careful reading of the order dated February 7, 1984 shows that certain interim benefits were granted to the employees preceding the introduction of the new pay scale on the basis of the recommendations of the Fourth Pay Commission. These benefits which were either in the nature of an additional payment or a revised interim pay scale were intended to cover the period preceding the introduction of the regular pay scale which came into effect on January 1, 1986. The order further shows that the Corporation was to carry the same pay structure and DA pattern as in the case of the government employees in the corresponding categories. All benefits granted by the Fourth Pay Commission in the nature of interim reliefs were also to be made available to the Corporation employees. The interim reliefs granted by the Corporation in the nature of what is imprecisely referred to as “head start” were to be maintained in implementing the scales recommended by the Fourth Pay Commission. The figures worked out in the penultimate paragraph of the Report indicate that whether the employees were retained on the original pay scale with the additional emoluments by way of interim relief or they had, as in the instant case, opted for the revised interim scale, they should suffer no loss by reason of the option they had exercised. But the overriding consideration behind the order dated February 7, 1984 is that, as in the case of all government employees, so in the case of the Corporation employees, the new scale recommended by the Fourth Pay Commission should be fully implemented. Whatever may be the amounts actually payable in terms of the interim reliefs, the employees of the Corporation should neither be paid less nor more than the government employees in the corresponding categories.

7. This means that all employees, whether retained on the original pay scale or placed on the revised interim pay scale during the period preceding January 1, 1986, will be placed on the pay scale adopted as per the recommendations of the Fourth Pay Commission in such a way that they will be fitted exactly in positions corresponding to their positions on the earlier pay scales. But the corresponding positions in the new pay scales will naturally carry

better emoluments, so as to maintain parity with the government employees in like categories.”

16. Contending that, by virtue of the aforementioned judgment in *DTC Workmen’s Union (supra)*, the recommendations of the 4<sup>th</sup> CPC were required to be extended, in their entirety, to employees of the respondent Corporation as well, the petitioner, and three other workmen, raised an industrial dispute through their Union which was referred to the learned Tribunal vide reference dated 27<sup>th</sup> January, 1992. The claimant-workmen also raised the question of their entitlement to promotion to the next Grade. As such the reference, made by the Secretary (Labour) Government of NCT of Delhi to the learned Tribunal contained the following terms of reference,

“Whether S/Sh. R.K. Ghosh, B.K. Sharma, Khazan Singh and Smit. Usha Sharma are entitled to the pay scale of draftsman Gr. III recommended by the pay commission from time to time and if so, to what relief including promotion to next grade are they entitled and what directions are necessary in this respect?”

17 It is important to mention, here, that no cavil, with the above extracted term of reference, as drawn up in contained in the Reference Order dated 25<sup>th</sup> January 1993 *supra*, has been expressed by the petitioner, or his fellow-applicants before the learned Tribunal, at any stage. Clearly, therefore, the issue referred to the learned Tribunal, for adjudication and decision, was the entitlement, of the petitioner, and his fellow-workmen, *to the pay scale of Draftsman Grade III*, as granted/recommended by the various Pay Commissions, from time to time.

18. The claimant-workmen filed a Statement of Claim, before the learned Tribunal, on around 15<sup>th</sup> April 1993. Notably, paras 17 to 19 thereof read as under:

“17. That the draughtsman employed in DTC are having the same level of skill educational qualification and strength of responsibilities *as done by draftsmen grade III* employed in other Central Government Servants.

18. That is the duties performed on the responsibilities discharged by *Draftsmen Gr. III*/employed in DTC are identical in skill etc to those assigned to an performed and discharged by their counterparts in other departments and organisations of the Government of India.

19. There is no justification whatsoever for denying *the draftsmen Gr. III in DTC* the benefit of grade in terms of 4<sup>th</sup> Pay Commission report.” (Emphasis supplied)

The prayer clause, in the Statement of Claim, read thus:

“ It is prayed that an award be passed directing Rs. 330-560 to *the draftsmen grade III* from 1.1.1973 in terms of recommendations of 3<sup>rd</sup> pay commission.

ii) Gave the Pay Scale of Rs. 1400-2300 from 1.1.1986 as recommended by 4<sup>th</sup> pay commission recommendations and as undertaken by DTC in writ petition No 300 of 1987 before the Supreme Court.

iii) Promote Draftsmen Grade III they have served in DTC as Gr. III Drafts for the last 20 years but we have not been placed on Grade-II although they fulfil all the qualifications. They may be granted the pay of II grade Draftsmen. The management be directed to pay the above named Draughtsman in the scale of Rs. 1400-40-1800-EB-50-2300.”

19. Though the aforementioned Statement of Claim, as filed by the petitioner and his fellow-workmen before the learned Tribunal, was delightfully vague and ambivalent in its recitals, the long and short of the claim appears to have been, for grant of the pay scale available to Draftsmen Grade III, in Central Government departments, for promotion to Grade II and, consequent, thereupon, grant of the pay scale applicable to the said grade.

20. The respondent-Corporation filed a written statement, opposing the aforementioned Statement of Claim filed by the petitioner and his fellow workmen. Apart from raising certain preliminary objections, regarding jurisdiction, locus etc., the respondent-Corporation asserted, on merits, that its entire set up was different from that of the Central Government in that there were, in the respondent-Corporation, no posts of Draftsman Grade I, II and III; *instead, the Recruitment Rules applicable to the corporation provided only for the posts of Draftsman and Head Draftsman*. As such, it was asserted that the OM, dated 13<sup>th</sup> March 1984, of the Department of Expenditure, would also not apply to the respondent-Corporation, the grades of Draftsman stipulated therein being entirely absent in its organization. The respondent-Corporation adopted the stand that, consequent on the recommendations of the 3<sup>rd</sup> CPC, it had awarded, to the Draftsmen employed with it, the nearest equivalent replacement pay scale (as recommended by the CPC), corresponding to the existing scale of pay of that category of Draftsman. As such, Draftsmen in the respondent-Corporation, it was asserted, were granted the revised pay scale of Rs.

260-430, i.e. Rs. 975-1660, whereas Head Draftsmen were granted the replacement pay scale of Rs. 425-700, i.e. Rs. 1400-2300. *The assertion, of the petitioner and his colleagues, that their duties were equivalent, or similar, to those discharged by Draftsman-III in the CPWD, was also denied.* In view of its distinct organizational structure, which was different from CPWD, it was contended that the prayer in the Statement of Claim was misconceived.

21. The claimant-workmen filed a rejoinder to the said reply of the respondent-Corporation, which does not contain anything substantial, and was merely in the nature of a non-speaking traversal.

22. During the pendency of the said reference before the learned Tribunal, the 5<sup>th</sup> CPC rendered its recommendations in 1996, whereby the scales of Draftsman Grade III, Draftsman Grade II, Draftsman Grade I in the CPWD were revised as under:

Post	Pre-revised (Rs.)	Revised (Rs.)
Draftsman Grade III	1200-2040	4000-6000
Draftsman Grade II	1400-2300	5000-8000
Draftsman Grade I	1640-2900	5000-9000

23. Affidavit-in-evidence was filed by the petitioner, as Ex.WW-1/A and affidavit-in-evidence of Mr J.R. Rana, who appeared as MW-1 on behalf of the respondent was filed as Ex. MW-1/A.

24. The petitioner while reiterating this claim in his affidavit, emphasized that the illegality in fixation of scales, at the end of the

respondent, commenced with the grant, to him and his fellow Draftsmen in the respondent-Corporation, of the scale of Rs.260-430 instead of Rs. 330-560 to which, in his submission, they were entitled in view of their being matriculates with a 2-years' diploma in Draftsmanship. These qualifications, it was emphasized, placed them at par with Draftsman Grade II in the CPWD and other Central Government Departments, whose pay scale was fixed as Rs.330-560. The initial erroneous fixation of their pay in the scale of Rs.260-430, it was submitted, resulted in a cascading effect, with each subsequent revision of pay scales. Pursuant to the 4<sup>th</sup> CPC, it was submitted, the petitioner and his fellow Draftsmen in the respondent-Corporation were entitled to the revised scale of Rs.1200-2040 which, too, was not granted to them. These acts of the respondent-Corporation, it was sought to be submitted, transgressed the undertaking given by the Supreme Court in *DTC Workers Union (supra)*.

25. *Per contra*, the affidavit of J.R. Rana (MW1), predictably highlighted the difference, in the cadre of Draftsman, in the respondent-Corporation, as compared to other Central Government Departments including the CPWD. The fact that there were, in the respondent-Corporation, only two levels of Draftsman, i.e. Draftsman and Head-Draftsman, was emphasized, to contend that the entire “set up” in the respondent-Corporation was different from that of the CPWD. Even though the organizational structure of the respondent-Corporation was distinct and different, it was sought to be submitted, consequent to the recommendations of the 3<sup>rd</sup> CPC, the nearest

replacement scale, of Rs.260-430 had been extended to the Draftsmen working with it. There was, it was submitted, no justification for the said Draftsmen to claim the same scales as were granted to Draftsman Grade III in the CPWD. In fine, it was reiterated that, in the respondent-Corporation, there were Draftsmen and Head Draftsmen, in the pre-revised scales of Rs.290-480 and Rs.425-700, which pursuant to the 4<sup>th</sup> CPC, were revised to Rs.975-1660 and Rs.1400-2300. Nothing illegal, it was submitted, could be said to exist therein.

26. In the proceedings before the learned Tribunal, the workmen led the evidence of the petitioner and Kundan Lal as WW-1 and WW-2 respectively, whereas the respondent-Corporation led the evidence of J.R. Rana alone as MW-1. It is not necessary to refer to the examination and cross examination of the said witnesses, as nothing substantial turns thereon.

27. The learned Tribunal, after adumbrating the aforementioned facts proceeded, *vide* the impugned award dated 27<sup>th</sup> June 2003, to reject the claim of the petitioner and his fellow workmen. In so doing, the learned Tribunal proceeded on the reasoning that, as against three levels of Draftsmen in CPWD, there were only two levels of Draftsmen in the respondent-Corporation i.e. Draftsman and Head Draftsman, thereby revealing that the “set up” in the respondent-Corporation was fundamentally different from that obtaining in the CPWD and other Central Government departments. It was further observed that the workmen had failed to produce any material to

parallelize their work or their organizational structure with those of Draftsmen in the CPWD. They, therefore, had failed to establish their entitlement to the scale of Rs.330-560 with effect from 01<sup>st</sup> June 1983 or to higher replacement/revised scales from time to time. The prayer for promotion to Grade-II was also rejected on the ground that there was no such Grade in the respondent-Corporation. Paras 10 to 13 of the impugned award, which contains the findings of the learned Tribunal, may, for ready reference, be reproduced as under:

“10. I have carefully gone through the evidence led by the parties. The workmen has deposed that the scale was revised from 290-480 to 322-522 w.e.f. 1-6-83 but no such order has been placed on the record whereas the management has categorically admitted that the pay was revised from one-6-83 but it has not denied the revision of pay scale from 290-480 322-522. The workmen have claimed that they were not awarded the scale of 1200-30-1560-EB-40-2040. The IV pay commission’s report has not been brought on record though it is admitted case of the parties that pay scale of Rs. 1200-30-1560-EB-14-2040 is the corresponding scale of 330-560. During the course of arguments, the argument advanced is that the workmen were entitled to the pay scale of 330-560 on the basis of 3<sup>rd</sup> pay commission but they were awarded only Rs. 260-430. However, subsequently that was revised to 322-522 and they were not given the scale of 330-560 which they were entitled. The claim of Workman is based upon the plea that their work is equivalent to work done by draftsmen in CPWD whereas they are not being awarded the pay scale of draftsmen given in CPWD. The document Ex. WW 1/1 shows that the 3 types of draftsmen. Category 1 is of the Draftsman having pay scale of 425-700, category 2 of draftsmen is having pay scale of 330-560 and 3<sup>rd</sup> category i.e. Draftsman Grade III is having pay scale of 260-430. Whereas the clear-cut case established by the management is that there are only 2 categories in the DTC 1<sup>st</sup> category is draftsmen and 2<sup>nd</sup> is Head draftsmen. The draftsmen were awarded the pay scale of 322-522 w.e.f. 1-6-83 and Held Draftsmen were enjoying the scale of 425-700. The admitted case of the parties is that so far as the Held Draftsmen are concerned they were being paid the scale of Draftsman grade IV in CPWD and

after the recommendation for a commission, they were being paid in the pay scale of 1400-2300.

11. The only dispute confined is whether the draftsmen in the DTC are entitled for the pay scale of 330-560 from one-6-83. As discussed above, it is established on the record that there were 2 categories of draftsmen in CPWD i.e. Cat. II and Cat. III. Admittedly, category II and category III of Draftsman by having the pay scale of 330-560 but category III was having the skill of 260-430 whereas the draftsmen with the management i.e. DTC is having only one category as compared to 2 categories in CPWD and they were awarded the pay scale of 322-522. In the different setup of working in CPWD and present management i.e. DTC, the workmen have failed to brought any material to establish that their work and structure is comparable with the draftsmen in CPWD. In other words, workmen have failed to establish that they are entitled for pay scale of 330-560 w.e.f. 1-6-83.

12. So far as the claim for pay scale of Rs. 1400-2300 is concerned, the workmen have failed to establish that how they are entitled for the scale from 1-1-87. The workmen have failed to brought schedule showing the corresponding scale. However, the authorised representative of management has vehemently argued that the scale of 1400-2300 is the corresponding scale of Rs. 425-700.

13. The 3<sup>rd</sup> claim made by the Workman's promotion of Draftsmen Grade II. But as discussed above, the management has categorically stated that there are only 2 categories. One is draughtsman and other is Head draughtsman. Consequently, it is held that Workman has failed to establish the categories of Grade III and Grade II what to say about promotion from Grade III to Grade II.

14. Consequently, in the light of above-mentioned discussion, this held that the workmen have failed to establish its claims and so there are not entitled for any relief. Award is passed accordingly. File be consigned to record room."

28. Of the workmen who had moved the Tribunal, the petitioner alone has approached this Court thereagainst, by way of the present writ petition.

29. The petitioner has, in the writ petition, sought to make out an entirely new case, totally distinct from the claim that formed the subject matter of the proceedings before the learned Tribunal. The claim of the petitioner, in the writ petition, *is for the scale of Draftsmen Grade-II in the CPWD*, i.e. Rs. 425-700, w.e.f. 01<sup>st</sup> January 1973 and Rs. 1400-2300 with effect from 01<sup>st</sup> September 1986. The prayer clause in the writ petition reads as under:-

“Prayer

It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased to:

Set aside award dated 27.06.2003 (Annexure-B) and direct respondent to pay to the petitioner the pay scale of Rs. 425-700 w.e.f. 01.01.1973 and the pay scale of Rs. 1400-2300 w.e.f. 01.01.1986 as recommended by IV pay commission and further as revised from time to time by various pay commissions with arrears of salary with interest by issuance of writ of Certiorari, mandamus or any other writ, rule, order or direction.

Any other relief as deemed fit in the facts and circumstances of the case may also be passed in favour of the petitioner”.

30. Where, therefore, the claim of the petitioner, and his fellow-workmen, in the Statement of Claim filed by them before the learned Tribunal, was, quite categorically, for being granted the scale of *Draftsman Grade III* in the CPWD and other Central Government Departments, i.e. Rs 330-560, the writ petition prays for grant of the scale of *Draftsman Grade II* w.e.f. 1<sup>st</sup> January 1973 and thereafter. The fact that the case being sought to be canvassed by the petitioner,

in his writ petition, is fundamentally different from that ventilated in the Statement of Claim filed before the learned Tribunal, is further apparent from paras 5, 7, 10, 11 and 13 of the writ petition, which are, for ready reference, reproduced as under:

“5. While working as conductor petitioner applied to DTC for being appointed to the post of Draftsman (Civil) as he was eligible for the same. By order dated 24-9-1982 petitioner was appointed as draftsman (Civil) on probation of one year. Petitioner was given the pay scale of 260-8-300-10-430. This scale was given to the Draftsman Grade-III in CPWD whose qualification was matriculation plus one-year experience. *As already stated above that the petitioner was having the qualification of matriculation plus two-year diploma in draftsmanship, which is the qualification for Draftsman Grade-II in CPWD, Government of India and pay-scale applicable to it is Rs. 300-560.*

7. Petitioner completed his probation successfully and was confirmed as draftsman (Civil) with effect from 24-9-1983. He continued to get the same pay scale as above. It may be mentioned here that on representation by the some of the workmen of Union of India regarding revision of pay scale the Ministry of Labour referred the dispute to the arbitrator for adjudication whose chairman was Justice Jaswant Singh. By award dt. 20-6-1980, the Board of Arbitrators categorized the draftsmen on the basis of their qualifications and fixed their pay scale as under:-

Level	Qualification for Direct Recruitment
I	Matric plus one year's experience
II	Matric plus two year diploma in Draftsmanship or its equivalent
III	Matric plus three year diploma in engineering or its equivalent

The three categories of Draftsmen viz. Grade III, Grade II and Grade I shall be included in the pay scales shown hereunder against each of the aforesaid categories.

Draftsmen Grade III	Rs.330-560
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*Draftsmen Grade II*                      *Rs.425-700*

*Draftsmen Grade I*                      *Rs.550-750*

*In this award the draftsmen having qualification of matric and 2 year diploma were categorized as Draftsman Grade-II and their pay scale was fixed at Rs. 425-700 w.e.f. 1-1-1973 notionally but for computation of arrears the date of reckoning was fixed from 29-7-1977. The original scale of 425-700 was 330-560. Govt. of India by a memorandum dated 13-3-1984 implemented the award dated 20-6-1980. Copy of order dated 13-3-1984 is Annexure-A hereto.*

10. In 1992 the petitioner, herein, alongwith certain other draftsman of DTC raised an Industrial Dispute that they were entitled to the pay scale as applicable to the Draftsman Grade-II and as recommended by the Pay Commission from time to time. DTC contested the claim of petitioner and other draftsmen on the ground that in DTC there were only Head Draftsmen and Draftsmen and there was no classification of Grade-I, II and III.

11. In 1996 while the dispute was still pending, at the recommendation of the 5<sup>th</sup> Pay Commission the scale of Rs. 1400-2300 was revised to Rs. 5000-8000 and the pay scale of Draftsmen Grade-1 was revised from Rs. 1640-2900 to Rs. 5500-9000 and pay scale of Grade-III was revised from 1200-2040 to 4000-6000. Since the qualification of the petitioner was that of Draftsmen Grade-II in CPWD and they were entitled to the same pay scale as applicable to them and as revised from time to time by various Pay Commissions, he denied the allegations of DTC by filing rejoinder.

13. *Since the award dated 27.06.2003 of the Industrial Tribunal has failed to consider that the qualification of the petitioner and other draftsmen was equivalent to that of Draftsmen Grade-II of CPWD and such they were entitled to similar pay scale, the same is wrong, illegal, without considering the evidence on record, arbitrary and unconstitutional and liable to be set aside". (Emphasis supplied)*

31. Clearly, the above extracted paras from the writ petition seek to make out a case of entitlement, of the petitioner, to the pay-scale being granted to Draftsman Grade-II in the CPWD, as opposed to the claim

in the Statement of Claim, filed before the learned Tribunal which was, specifically, for grant of the pay-scale of Draftsman Grade III in the CPWD. The averment, in the above extracted passages from the writ petition (as reflected by the italicized portions thereof), that the petitioner had, before the learned Tribunal, raised an industrial dispute for being granted the pay scale of Draftsmen Grade II in the CPWD, is obviously incorrect and, in fact, misleading – especially as no copy of the Statement of Claim has been filed with the writ petition. In the circumstances, the contention, of the petitioner, in para 13 of the writ petition that *“since the award dated 27.06.2003 of the Industrial Tribunal has failed to consider that the qualification of the petitioner and other draftsmen was equivalent to that of Draftsmen Grade-II of CPWD and such they were entitled to similar pay scale, the same is wrong, illegal, without considering the evidence on record, arbitrary and unconstitutional and liable to be set aside”* is, consequently, equally misleading. The learned Tribunal can hardly be faulted for not considering a case which was never put before it.

32. The respondent-Corporation had filed a counter-affidavit, in response to the writ petition, which, it needs to be regrettably stated, was extremely unsatisfactory, and do not address any of the relevant issues in the case. All that the said affidavit seeks to aver, by way of rebuttal to the averments contained in the writ petition, is by way of a bold denial of the contention that the petitioner was performing the same duties, in the respondent – Corporation, as were being performed by Draftsman Grade II in the CPWD.

33. The petitioner has not chosen to file any rejoinder to the said counter affidavit. Given the absolutely skeletal nature of the counter affidavit, he can hardly be faulted for not having done so.

34. Written submissions have been filed by the petitioner as well as respondent, on more than one occasion, and the petition has also been argued before me at length.

35. In his written submissions dated 28<sup>th</sup> September 2015, the petitioner, for the first time, sought to contend that, as per the Delhi Transport Corporation (Scales of Pay) Regulations, 1992, there were three grades of Draftsman in the DTC, whose pay scales could, in a tabulated manner, be depicted thus:

Sl. No.	Category	Existing Pay Scale	Revised Pay Scale
1.	Draftsman	290-480	950-1500
2.	Draftsman Gr.I	380-500	1320-2040
3.	Head Draftsman	425-700	1400-2300

As such, the contention, of the respondent, that there were only two grades of Draftsman in the DTC, it is sought to be contended, was incorrect. Interestingly, immediately following the aforementioned assertion, it is contended, in the said written submissions, that the claim of the petitioner was “that his post being the lowest **term** of Draftsman in DTC, was comparable to Draftsman Grade-III in the CPWD”. As such, the written submissions seek to contend, the pay

scale of Rs.290-480 granted to the petitioner, was required to be replaced by Rs.330-560 as per the OM dated 13<sup>th</sup> March 1984 *supra*. By this submission, the petitioner has effectively abandoned the case set up by him the writ petition i.e., for being granted the scale of Draftsman Grade II in the CPWD, and has, apparently, reverted to his original claim, as raised in the Statement of Claim filed before the learned Tribunal, for being granted the grade of Draftsman Grade-III in the CPWD.

36. Reliance was also placed, in the written submission of the petitioner, on the Delhi Transport Authority Act 1958, and the Delhi Road Transport Authority (Conditions of Appointment & Services) Regulations 1952, as well as Delhi Transport Corporation (Scales of Pay) Regulations 1992, to contend that, right from its inception, administrative control over the respondent-Corporation was that of the Central Government, to the extent that even when, for some time, the respondent-corporation was under the MCD, the pay scale extended to its employees used to be equivalent to that of Central Government employees.

37. The petitioner further relied, in his written submissions dated 28<sup>th</sup> September 2015, on *U.O.I. v Debashish Kar (1995) Supp 3 SCC 528*, wherein the Supreme Court upheld the judgment of the Central Administrative Tribunal, to extend, to tracers in the **EME of the Ministry of Defence** the scale of Rs.330-560, as was made available *vide* the O.M. dated 13<sup>th</sup> March 1984 (*supra*). As such, the petitioner

has sought to contend that the nomenclature of the posts was irrelevant and that what mattered was the qualification, i.e. matriculation with 2 years' diploma in Draftsmanship, which was the basis for grant of relief by the Supreme Court in *Debashis Kaur (supra)* as well.

38. The petitioner also referred, in the written submissions, to a subsequent OM dated 19<sup>th</sup> October 1994, which, too, he submits, was, in law, available to him; however, no such case having been raised before the learned Tribunal, refrain from expressing any opinion on the said OM, or its availability to the petitioner.

39. In response, the respondent-corporation filed written submissions dated 14<sup>th</sup> September 2015; however, as they merely reiterate the findings of the learned Tribunal, it is not necessary to burden this judgment with any detailed allusion thereto.

40. The petitioner also filed a "brief written synopsis", on 22<sup>nd</sup> September 2017, which merely reiterated the assertion that there were, in fact, three grades of Draftsman in the respondent-corporation and not two grades as the respondent had sought to contend. Apparently without prejudice, the said submissions further aver that, as the petitioner was claiming parity with Draftsman Grade III, which had been revised to Rs.330-560, the issue of whether there were two grades or three grades of Draftsman in the DTC, was immaterial. He also emphasized the undertaking, given by the DTC, to the effect that

it would extend, to its employees, the pay scales recommended by the CPC.

41. The respondent, too, filed a “brief synopsis” dated 22<sup>nd</sup> September 2017, by way of response thereto, contending as under:

(i) The OM dated 13<sup>th</sup> March 1984<sup>supra</sup>, issued by the Department of Expenditure, specifically stated that it applied to offices of the Government of India. The DTC was not an office of the Government of India in view of Office Order No.8 dated 07<sup>th</sup> August 1996, which stated that, with effect from 05<sup>th</sup> August 1996, the Hon’ble President had delegated the powers of the Central Government, in respect of the respondent-Corporation, to the Lieutenant Governor of the National Capital Territory of Delhi. As the OM dated 13<sup>th</sup> March 1984, was not adopted by the DTC, it was contended that no benefit, thereof, could be availed of by the petitioner. Reliance was also placed, for this purpose, on the judgment of this Court in ***Balbir Singh v DTC in W.P (C) 3634/2012.***

(ii) Autonomous bodies were not bound to adopt the recommendations of the CPC, as held by the Supreme Court in ***Surya Narayana Sahoo v C.S.I.R., (1988) 2 SCC 162.***

(iii) The contention, of the petitioner, that there were three grades of Draftsman in the respondent-Corporation, was denied,

and the stand that there were only two such Grades – Draftsman and Head Draftsman, was reiterated. For this purpose, the statement showing the various categories of posts, pay scales and qualifications, as drawn up by the respondent-Corporation itself, was annexed, which, admittedly, shows only two categories of Draftsman i.e. Draftsman and Head Draftsman. No evidence, to support his claim for parity, in pay, with Draftsman Grade III in the CPWD had been adduced by the petitioner.

(iv) The judgment in *Debashis Kar (supra)*, relied upon by the petitioner, was of no avail for him, as the OM, dated 13<sup>th</sup> March, 1984, did not apply to the respondent-Corporation, by virtue of its not being an office of the Government of India.

(v) The set up of the cadre of Draftsman in the respondent-Corporation was different from that which existed in the CPWD and Central Government Departments.

42. During arguments before me, both counsel especially reiterated the aforementioned contentions already advanced in the written submissions filed by them.

### **Analysis**

43. Viewed any which way, the petitioner has, unfortunately, no case.

44. First, to address the issue of whether the claim of the petitioner can be sustained by applying the “equal pay for equal work” principle, i.e., on the doctrine of parity of pay.

45. The last word on the parity of pay principle, at least till date, stands said, by the Supreme Court, in its recent judgment in *State of Punjab v Jagjit Singh*, (2017) 1 SCC 148. Paras 41.1 to 42.17 of the report, which are illuminatingly self speaking, may be reproduced, to advantage, as under:

"42.1 The "onus of proof" of parity in the duties and responsibilities of the subject post with the reference post under the principle of "equal pay for equal work" lies on the person who claims it. He who approaches the court has to establish that the subject post occupied by him requires him to discharge equal work of equal value, as the reference post (see *Orissa University of Agriculture & Technology v. Manoj K Mohanty*, (2003) 5 SCC 188, *U.T Chandigarh, Admn. v. Manju Mathur*, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348, *SAIL v. Dibyendu Bhattacharya*, 2011) 11 SCC 122 : (2011) 2 SCC (L&S) 192 and *National Aluminium Co. Ltd. v. Ananta Kishore Rout*, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353).

42.2 The mere fact that the subject post occupied by the claimant is in a "different department" vis-à-vis the reference post does not have any bearing on the determination of a claim under the principle of "equal pay for equal work". Persons discharging identical duties cannot be treated differently in the matter of their pay, merely because they belong to different departments of the Government (see *Randhir Singh v. U.O.I.*, (1982) 1 SCC 618 : 1982 SCC (L&S) 119 and *D.S. Nakara v. U.O.I.*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145).

42.3 The principle of "equal pay for equal work", applies to cases of unequal scales of pay, based on no classification or irrational classification (see *Randhir Singh v. U.O.I.*, (1982) 1 SCC 618 :

**1982 SCC (L&S) 119**). For equal pay, the employees concerned with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see ***Federation of All India Customs and Central Excise Stenographers v. U.O.I.*, (1988) 3 SCC 91 : 1988 SCC (L&S) 673**, ***Mewa Ram Kanojia v. All India Institute of Medical Sciences*, (1989) 2 SCC 235 : 1989 SCC (L&S) 329**, ***Grih Kalyan Kendra Workers' Union v. U.O.I.*, (1991) 1 SCC 619 : 1991 SCC (L&S) 621** and ***S.C Chandra v. State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943**).

42.4 Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay and cannot claim the benefit of the principle of "equal pay for equal work" (see ***Randhir Singh v. U.O.I.*, (1982) 1 SCC 618 : 1982 SCC (L&S) 119**, ***State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*, (2002) 6 SCC 72 : 2002 SCC (L&S) 822** and ***Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493**). Therefore, the principle would not be automatically invoked merely because the subject and reference posts have the same nomenclature.

42.5 In determining equality of functions and responsibilities under the principle of "equal pay for equal work", it is necessary to keep in mind that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see ***Federation of All India Customs and Central Excise Stenographers v. U.O.I.*, (1988) 3 SCC 91 : 1988 SCC (L&S) 673** and ***SBI v. M.R Ganesh Babu*, (2002) 4 SCC 556 : 2002 SCC (L&S) 568**). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of "equal pay for equal work" (see ***State of U.P. v. J.P. Chaurasia*, (1989) 1 SCC 121 : 1989 SCC (L&S) 71** and ***Grih Kalyan Kendra Workers' Union v. UO.I.*, (1991) 1 SCC 619 : 1991 SCC (L&S) 621**).

42.6 For placement in a regular pay scale, the claimant has to be a regular appointee. The claimant should have been selected on the basis of a regular process of recruitment. An employee appointed on a temporary basis cannot claim to be placed in the regular pay scale (see *Orissa University of Agriculture & Technology v. Manoj K Mohanty*, (2003) 5 SCC 188 : 2003 SCC (L&S) 645).

42.7 Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay scales. Such as - "selection grade", in the same post. But this difference must emerge out of a legitimate foundation, such as - merit, or seniority, or some other relevant criteria (see *State of UP. v. J.P. Chaurasia*, (1989) 1 SCC 121 : 1989 SCC (L&S) 71).

42.8 If the qualifications for recruitment to the subject post vis-à-vis the reference post are different, it may be difficult to conclude that the duties and responsibilities of the posts are qualitatively similar or comparable (see *Mewa Ram Kanojia v. All India Institute of Medical Sciences*, (1989) 2 SCC 235 : 1989 SCC (L&S) 329 and *State of W.B. v. Tarun K. Roy*, (2004) 1 SCC 347 : 2004 SCC (L&S) 225). In such a case the principle of "equal pay for equal work" cannot be invoked.

42.9 The reference post with which parity is claimed under the principle of "equal pay for equal work" has to be at the same hierarchy in the service as the subject post. Pay scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see *U.O.I. v. Pradip Kumar Dey*, (2000) 8 SCC 580 : 2001 SCC (L&S) 56 and *Hukum Chand Gupta v. ICAR*, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493).

42.10 A comparison between the subject post and the reference post under the principle of "equal pay for equal work" cannot be made where the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see *Harbans Lal v. State of HP*, (1989) 4 SCC 459 : 1990 SCC (L&S) 71). Persons engaged differently, and being

paid out of different funds, would not be entitled to pay parity (see *Official Liquidator v. Dayanand*, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943).

42.11 Different pay scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of "equal pay for equal work" would not be applicable. And also when the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see *SBI v. M.R. Ganesh Babu*, (2002) 4 SCC 556 : 2002 SCC (L&S) 568).

42.12 The priority given to different types of posts under the prevailing policies of the Government can also be a relevant factor for placing different posts under different pay scales. Herein also, the principle of "equal pay for equal work" would not be applicable (see *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*, (2002) 6 SCC 72 : 2002 SCC (L&S) 822).

42.13 The parity in pay, under the principle of "equal pay for equal work", cannot be claimed merely on the ground that at an earlier point of time the subject post and the reference post, were placed in the same pay scale. The principle of "equal pay for equal work" is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see *State of W.B. v. W.B. Minimum Wages Inspectors Assn.*, (2010) 5 SCC 225 : (2010) 2 SCC (L&S) 1).

42.14 For parity in pay scales under the principle of "equal pay for equal work", equation in the nature of duties is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see *U.T. Chandigarh, Admn. v. Manju Mathur*, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348).

42.15 There can be a valid classification in the matter of pay scales between employees even holding posts with the same nomenclature i.e. between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see ***Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493***), when the duties are qualitatively dissimilar.

42.16 The principle of "equal pay for equal work" would not be applicable, where a differential higher pay scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see ***Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493***).

42.17 Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay scales under the principle of "equal pay for equal work", even if two organizations have a common employer. Likewise, if the management and control of two organizations is with different entities which are independent of one another, the principle of "equal pay for equal work" would not apply (see ***S.C Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943*** and ***National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353***).

46. The doctrine of pay parity, therefore, stands regulated by the following principles [as enunciated in ***Jagjit Singh (supra)***]:

- (i) The onus of proof, to establish that the requisite ingredients, for claiming pay parity, exist, is squarely on the claimant.
- (ii) Other requisites being satisfied, parity in pay cannot be denied on the sole ground that the posts concerned are in different departments.

- (iii) The principle of “equal pay for equal work” applies to cases of unequal pay scales, without rational classification.
- (iv) Equality in work is the paramount consideration, for claiming pay parity. “Equality” in work, as would entitle invocation of the doctrine, denotes work that is functionally, hierarchically, qualitatively and quantitatively equal, with equal sensitivity and confidentiality.
- (v) The nature of work, in the two posts, must be equally onerous, involving the same amount of operational work/risk.
- (vi) A post which entails the requirement of taking crucial decisions may legitimately be placed in a higher pay scale.
- (vii) The qualifications prescribed for the posts are also required to be equal.
- (viii) Promotional avenues available to the posts, parity whereof is being sought, have also to be equal. No parity in pay can be claimed, with a promotional post.
- (ix) The posts, wherein parity is being claimed, are required to be in the same establishment, and in the same geographical location. Different pay scales may, for example, be granted to employees who, though holding the same posts, are working in the headquarters, and at institutional/sub-office level.
- (viii) Equality in rank/designation is not sufficient to press, into service, the “equal pay for equal work” doctrine. Persons of the same rank/designation, but having dissimilar powers, duties and responsibilities, may justifiably be placed in different scales of pay.

- (x) Regular pay scale may be claimed only by a regularly appointed employee, i.e. an employee appointed pursuant to a regular recruitment process.
- (xi) Difference in merit, seniority, and other such criteria may also justify difference in pay scales, or placement of some employees, performing the same functions, duties and responsibilities, in, for example, a “selection grade”.
- (xii) Persons paid out of different funds cannot claim pay parity.
- (xiii) Posts, which, per policy, are given different priority by the Government, may also be placed in different pay scales, and the “equal pay for equal work” principle would not apply in such cases.
- (xiv) Historical parity in pay is, by itself, insufficient to invoke the doctrine at a later stage.
- (xv) Higher pay scales may also be granted for ameliorating stagnation, or neutralizing absence of promotional avenues.

47. Without delving into specifics, it is clear that the petitioner, and his fellow workmen, miserably failed to discharge the burden, which the law cast on them, to establish that the above indicia stood fulfilled, so as to make out a case for claiming parity with Draftsmen in the CPWD or other Central government departments. Judicial notice may be legitimately taken of the fact that the respondent-Corporation is, functionally, a Corporation with an entirely different agenda, entailing entirely different duties and responsibilities, as compared to the

CPWD or any other department of the Central Government. In the absence of specific and clear-cut evidence to that effect, it would, *prima facie*, be impossible to presume, far less believe, that draftsmen in the CPWD would discharge duties similar to draftsmen in the respondent-Corporation. Of course, had the petitioner discharged the burden, cast on him to establish this fact, then, one essential ingredient – and one alone – would stand fulfilled, to support his claim to pay parity. In the present case, however, except for lone averment, in his affidavit, to the effect that the petitioner, and his fellow workmen, were discharging duties similar to those discharged by draftsmen in other Central Government departments, including the CPWD, there is precious little to establish the said fact. The aforementioned averment, though made on affidavit by the petitioner as, equally, be denied, on affidavit, by the respondent, in its written statement filed, in opposition to the Statement of Claim, before the learned Tribunal. It becomes, therefore, a case of oath versus oath, and this Court, exercising certiorari jurisdiction under Article 227 of the Constitution of India, is hopelessly ill-equipped to resolve the difference.

48. Resultantly, the petitioner, quite clearly, cannot base his claim on the principle of “equal pay for equal work”.

49. Can, then, the petitioner seek to rely on the OM, dated 13<sup>th</sup> of March 1984, issued by the Department of Expenditure? Unfortunately for him, it does not seem so.

50. Petitioner and respondent have, till 2015 at least, been *ad idem* that there are only two grades of Draftsman in the respondent-Corporation, i.e. Draftsman and Head Draftsman. This position, taken by the respondent-Corporation in its written statement in response to the Statement of Claim of the petitioner and his fellow-workmen, was never traversed by the latter. Neither did the claimant-workmen seek, before the learned Tribunal, to urge that the submission, of the respondent, that there were, in the respondent-Corporation, only two grades of Draftsman, was incorrect on facts. Neither, for that matter, does even the present writ petition, so seek to contend. It was for the first time, in the written submissions filed by him in 2015, that the petitioner raised the contention that there were, in the respondent-Corporation, actually three grades of Draftsman, and not two. The scales of pay applicable to an organization is a pure question of fact, and it was clearly impermissible for the petitioner, in its written submissions, to raise such an issue for the first time. The respondent-Corporation, for its part, denied the said asseveration of the petitioner, and also attached an organizational Chart, drawn up by the respondent-Corporation itself, clearly indicating only two posts of Draftsman. Neither the Regulations, on which the petitioner seeks to rely, nor the organizational chart which the respondent, *per contra*, would press into service, were before the learned Tribunal and this court is loath, at this juncture, to choose one over the other. In any event, it is clear that the learned Tribunal cannot be faulted, in any manner, in having rejected the claim of the petitioner, and his fellow-workmen, on the ground that the OM dated 13<sup>th</sup> March 1984 *supra*

being, on its terms, applicable only to organizations having the posts of Draftsman Grades I, II and III, the said OM would not, very well, be applied to the respondent-Corporation, which had only two such grades of Draftsman, i.e Draftsman and Head Draftsman. The OM is clear and unambiguous on its terms. It conveys the decision, of the Hon'ble President of India, "that the scales of pay of *Draughtsmen Grade III, II and I* in Officer/Departments of the Government of India, other than the Central Public Works Department, may be revised *as above* provided the recruitment qualifications are similar to those prescribed in the case of Draftsmen in Central Public Works Department." The said OM, therefore, has no applicability, whatsoever, to an organization/department which does not, in its organizational structure, have the posts of Draftsmen Grade III, II and I. The respondent-Corporation not having, in its organization, the said three Grades of Draftsman, the OM, plainly, cannot apply to it.

51. Even if, for that matter, the submission, of the petitioner, that there were three grades of Draftsman in the respondent-Corporation, and not two, were to be accepted, the petitioner would, still, be unable to succeed, for the simple reason that the scales of pay of Draftsman, applicable to the said three grades, as contended by the petitioner, are Rs 290-480, 380-500 and 425-700, respectively, which are, clearly, different from the "original scales" which the OM, dated 13<sup>th</sup> of March 1984, sought to revise – being Rs. 260-430, 330-560 and 425-700.

52. That carries the discussion, a step forward, to the emphatic contention, of the petitioner, that, being a matriculate with a 2-year diploma in Draftsmanship under his belt, his pay ought to have been fixed in the scale of Rs. 330-560, rather than Rs. 290-480. This contention is premised on certain fundamental misconceptions regarding fixation of pay, and the right to claim a particular scale. Scales of pay attach to posts, and not to qualifications. While parity in qualifications is, undoubtedly, a *sine qua non* for laying a claim to parity in pay, it does not follow, as a corollary, that any employee, or workman, can claim a higher scale of pay only on the ground that persons, in other departments, possessing the qualifications possessed by him, are drawing such higher scales. We are in an unfortunate age in which persons, having high qualifications, are forced, by constraints of hearth and home, to accept positions totally incommensurate with the qualifications held by them. Having accepted such positions, however, it is not open to any such person to seek a higher scale merely by dint of the qualifications held by him. The petitioner has not been able to place, on record, any statutory provision, or even policy decision, on the part of the Government, to extend, across the board, the scale of Rs. 330-560, to all Draftsmen who are matriculates and possess a 2-year diploma in Draftsmanship. Service jurisprudence does not recognize any principle permitting upward enhancement of pay solely on the basis of the qualification held by the claimant. The assertion, of the petitioner, before the learned Tribunal, as well as before this court, that, as he was a matriculate, with an additional qualification of a 2-year diploma in Draftsmanship, he was entitled to

the scale being drawn by Draftsman Grade II in the CPWD and other Central Government departments, is, therefore, entirely without merit.

53. Adverting, now, to the judgment of the Supreme Court in *Debashis Kar (supra)*, the reliance, by the petitioner, thereon, is founded on paras 16 and 17 of the said decision, which read thus:

“16. Dealing with draughtsmen in the Army Base Workshops in the EME, the Principal Bench of the Tribunal has observed that in the EME for the post of draughtsman, the qualifications that are prescribed are “Matriculation or its equivalent with two years' Diploma in Draughtsmanship Mechanical or its equivalent”. The Tribunal has referred to the Report of the Third Pay Commission wherein, while dealing with draughtsmen who were in the pay scale of Rs 150-240 (as per report of Second Pay Commission), it is stated:

“(ii) for the next higher grade of Rs 150-240 the requirement is generally a Diploma in Draughtsmanship or an equivalent qualification in Architecture (both of 2 years' duration after Matriculation).”

17. The Tribunal has observed that Tracer in the EME could not be treated in any other manner but on a par with Grade III Draughtsman of CPWD, keeping in view their recruitment qualifications. The Tribunal held that the benefit of Office Memorandum dated 13-3-1984 had been rightly extended to Draughtsmen in EME and that its withdrawal was illogical and irrational. The learned counsel for the appellants has been unable to show that the said view of the Tribunal suffers from an infirmity which would justify interference by this Court.”

54. Adjudication is never an exercise conducted *in vacuo*. While the law declared by the Supreme Court, undoubtedly, binds, by virtue of Article 141 of the Constitution of India, it is equally trite that any reliance, on precedent, unmindful of the background factual matrix, would be folly. It is an oft-quoted, and well-recognized, truism, that

one additional fact is sufficient to make all the difference in the applicability, of one judicial authority, to the facts of another. The following passages, from *Collector of Central Excise v Alnoori Tobacco Products*, (2004) 6 SCC 186, unmistakably lay down the law in this regard:

“11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark on lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton*, 1951 AC 737 : (1951) 2 All ER 1 (HL) (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge....”

12. In *Home Office v. Dorset Yacht Co.* [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)], Lord Reid said (All ER p. 297g-h), “Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances”. Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No. 2)*[(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed: “One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament.” And, in *British Railways Board v. Herrington* [(1972) 1 AC 877 : (1972) 2 WLR

537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

“There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.”

13. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

14. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT [AIR 1962 SC 680], AIR p. 688, para 19*)

“19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

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“Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.” ”

55. Applying the above noted principles, it becomes apparent that the reliance, by the petitioner, on the decision in *Debashis Kar (supra)*, cannot carry his case any further. In the first place, a bare reading of para 17 of the said decision makes it apparent that it has been rendered because of the inability, on the part of the learned

counsel appearing for the appellants in that case, to point out any basis to question the correctness of the impugned decision of the Tribunal. That apart, the applicability, of the said decision, also stands discountenanced by the following observations, figuring in para 14 of the report:

“The Tribunal has held that the decision of the Ordnance Factory Board based on the Sub-Committee report that the applicants (respondents herein) should be equated with Tracers and Draughtsmen Grade III of CPWD was fallacious. In this context, it would be relevant to mention that as per the pay scales fixed on the basis of report of the First Pay Commission of 1947 there was no difference in the pay scales of Draughtsmen and Tracers in the Ordnance Factories and the pay scales of Draughtsmen and Tracers in CPWD Senior Draughtsmen in the Ordnance Factories and Draughtsmen in the CPWD were placed in the pay scale of Rs 150-225, Draughtsmen in the Ordnance Factories and Assistant Draughtsmen in CPWD were placed in the scale of Rs 100-185 and Tracers in Ordnance Factories as well as in CPWD were placed in the scale of Rs 60-150. On the basis of the report of the Second Pay Commission in 1959 there was a slight modification in the pay scale of Senior Draughtsmen in Ordnance Factories. Tracers in the Ordnance Factories and CPWD were placed in the same pay scale of Rs 110-200 and Draughtsmen in Ordnance Factories and Assistant Draughtsmen in CPWD were placed in the same pay scale of Rs 150-240. Senior Draughtsmen in Ordnance Factories were placed in the pay scale of Rs 205-280 while Draughtsmen in CPWD were placed in the pay scale of Rs 180-380. By Notification dated 1-9-1965, there was change in the designation of posts of drawing office staff in CPWD and Draughtsman was designated as Draughtsman Grade I, Assistant Draughtsman was designated as Draughtsman Grade II and Tracer was designated as Draughtsman Grade III. Thereafter on the basis of the report of the Third Pay Commission in 1973, Tracers in the Ordnance Factories and Draughtsmen Grade III in CPWD were placed in the same pay scale of Rs 260-430, Draughtsmen in Ordnance Factories and Draughtsmen Grade II in CPWD were placed in the same pay scale of Rs 330-560 and Senior Draughtsmen in Ordnance Factories and the Draughtsmen Grade I in CPWD were placed in the same pay scale of Rs 425-700. This would

show that Tracer in Ordnance Factories has all along been treated as equivalent to Tracer/Draughtsman Grade III in CPWD and Draughtsman in Ordnance Factories has all along been treated as equivalent to Assistant Draughtsman/Draughtsman Grade II in CPWD. As a result of the revision of pay scales in CPWD on the basis of the Award of the Board of Arbitration, the pay scale of Draughtsman Grade III was revised to Rs 330-560, while that of Draughtsman Grade II was revised to Rs 425-700 and of Draughtsman Grade I was revised to Rs 550-750. The denial of similar revision of pay scale to Draughtsmen in Ordnance Factories would result in their being downgraded to the level of Tracer/Draughtsman Grade III in CPWD. Office Memorandum dated 13-3-1984 cannot, in our opinion, be construed as having such an effect.”

56. The facts, applicable to tracers, as set out in the above extracted passage, quite obviously, do not apply to the case of the petitioner, or his fellow-workmen in the respondent-Corporation. These facts, quite obviously, have played their part in guiding the decision of the Supreme Court, which has, on a holistic appreciation of all existing circumstances, equated tracers with Draftsmen Grade III. The Statement of Claim, filed by the petitioner and his fellow-workmen before the learned Tribunal do not even remotely seek to draw attention to any such facts, parallelizing their case, as Draftsmen in the respondent-Corporation, with the case of Draftsmen in the CPWD or other departments of the Central Government. In the absence of any such case having been pleaded, far less proved, by the petitioner, blind reliance, on the decision in *Debashis Kar (supra)*, would clearly be inappropriate.

57. Neither can the judgment of the Supreme Court, in *D.T.C. Workers Union (supra)*, advance the claim of the petitioner. The said decision dealt with the general question of extension, to the employees of the respondent-Corporation, of the benefits of the 4<sup>th</sup> CPC. The Supreme Court was, in that case, not concerned with any issue even remotely similar to the claim ventilated by the petitioner in the present case, as is apparent from paras 13 and 14 *ibid*.

58. Resultantly, this court is constrained to hold that the petitioner has not been able to make out any case, on facts or in law, for grant of the reliefs claimed by him, or his fellow-workmen, before the learned Tribunal. Consequently, no infirmity can be said to exist, in the impugned Award dated 27<sup>th</sup> June 2003, passed by the learned Tribunal, as would merit interference, by this Court, in exercise of its jurisdiction under Article 226 or 227 of the Constitution of India.

59. As the petitioner's claim has, even otherwise, no legs to stand on, I refrain from making any observation regarding the contention, of the respondent, that, administrative control over the respondent – Corporation having been transferred to the Hon'ble Lt. Governor, the OM dated 13<sup>th</sup> March, 1984 does not apply. In any case, to the Hon'ble Lt. Governor, the OM dated 13<sup>th</sup> March, 1984 does not apply. In any case, this too, is a defence raised before this Court for the first time.

60. Before parting with this judgment, I may note that the present writ petition, as filed by the petitioner, is liable to be dismissed even on the sole ground that it seeks to make out an entirely new case, neither pleaded nor proved, by the petitioner, before the learned Tribunal. What is worse, the writ petition pleads that the petitioner, and his fellow workmen had, before the learned Tribunal, prayed for grant, to them, of the pay scale of Draftsman Grade II in the CPWD, which is obviously incorrect and, in fact, misleading. Worse still, it has been so pleaded without annexing, with the writ petition, the Statement of Claim filed by the petitioner and his fellow-workmen, before the learned Tribunal, which would have clearly revealed the total dissonance, in the case set up before this court, as compared to the case that had been pleaded before the learned Tribunal. I have, however, not chosen to take any adverse notice of these facts, given the fact that the petitioner is only a workman with the respondent-Corporation.

61. The writ petition is, therefore, dismissed, without any order as to costs.

**C. HARI SHANKAR  
(JUDGE)**

**DECEMBER 1, 2017**  
*neelam/gayatri*