

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 2929/2002

New Delhi this the 19th day of August, 2003

Hon'ble Mr.Justice V.S.Agarwal, Chairman  
Hon'ble Shri S.K.Naik, Member (A)

Shri D.K.Sharma,  
Assistant Artist Retoucher,  
S/O Shri Ramesh Chand Sharma,  
R/O 17 UA, Jawahar Nagar,  
Delhi-110007

Applicant

(By Advocate Shri Sachin Chauhan )

VERSUS

1. Union of India,  
through its Secretary,  
Ministry of Health and Family Welfare,  
North Block, New Delhi.
2. Under Secretary,  
Department of Family Welfare,  
Ministry of Health and Family  
Welfare, Nirman Bhawan, New Delhi.
3. Secretary,  
Ministry of Finance,  
Department of Expenditure,  
New Delhi.

Respondents

(By Advocate Shri R.P.Agarwal )

O R D E R (ORAL)

Hon'ble Mr.Justice V.S.Agarwal, Chairman

Applicant, D.K.Sharma joined as Assistant Artist Retoucher in the Ministry of Health and Family Welfare. He was placed in the pay scale of Rs.1400-2300. By virtue of the present application, he seeks that he is entitled to the pay scale of Rs 5000-8000 from 1.1.1996 as per the recommendations of the 5th Pay Commission.

2. Applicant asserts that from 1.1.1996, the 5th Pay Commission recommended that the pay scale of Assistant Artist Retoucher working in the Govt.of India should be

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enhanced from Rs.1400-2300 to Rs.1600-2660, but no distinction in recommending the pay scale for the post of Assistant Artist Retoucher working in different Ministries had been made. The grievance of the applicant is that he should have been placed in the scale of pay Rs.5000-8000 as has been done in case of similarly placed other persons in the other Ministries. Hence the present application.

3. The application has been contested by the respondents. As per the recommendations of the 5th Pay Commission, the scale of the post of Assistant Artist Retoucher was revised to Rs.4500-7000 w.e.f. 1.1.1996. The applicant had submitted representation stating that pay scale for the post of Junior Artist/Assistant Artist Retoucher has been revised to Rs.5000-8000 in the Govt. of India Press and, therefore, the pay scale of the applicant should also be revised. The request of the applicant was rejected because of the following grounds:-

" (a) Assistant Artist Retoucher of Offset Press of Govt. of India were given the scale of Rs.5000-8000 as per the specific recommendations of Fifth Central Pay Commission. No such recommendation has been made in respect of the applicant who is working under Ministry of Health and Family Welfare (Annexure R-3).

(b) Minimum qualification prescribed for Assistant Artist Retoucher in Govt. of India Press includes Matriculation along with Diploma/Certificate in relevant field with 3 years experience for a certificate of completion of apprenticeship under the relevant Act (Annexure R-4). As against this, minimum qualification prescribed for similar designated post in MMU Press under Department of Family Welfare is only Matriculation with 3 years experience and qualification of Diploma is only desirable. Hence, the posts are not comparable even as per minimum educational qualifications prescribed".

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It is, therefore, contended that the applicant's claim is without any merit.

4. The short question agitated on behalf of the applicant is that in other Departments/Ministries similarly situated Assistant Artist Retouchers have been placed in the higher scale and, therefore, the principle of 'equal pay for equal work' has been violated.

5. The proposition of law is not the subject matter of controversy. The principle of 'equal pay for equal work' though, ~~is not~~ <sup>is a</sup> fundamental right ~~of~~ Constitutional goal, ~~Ordinarily~~ <sup>but at the same time</sup> it is for the administrative Ministry to fix the scale of the employees. Unless there is hostile discrimination, the Tribunal will not interfere in this regard. In the case of UOI and Ors. Vs. P.V.Hariharan and Anr. (1997 SCC (L&S) 838), the Hon'ble Supreme Court has held:-

" Quite often the Administrative Tribunals are interfere with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribing pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon the issue. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scale".

It is in the touchstone of the above stated judgement that we have to exercise upon the facts of the case.

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6. Learned counsel for the applicant contended, as also referred to above, that similar persons cannot be given separate scale. As per the Recruitment Rules applicable to the applicant and the post held by him, the qualifications are:-

"Essential

1. Matriculation or equivalent qualification from a recognized University or Board.

2. At Least 3 year's practical experience of preparing and retouching of colour separation negative/positives, preparation of formats, assembling, arranging patching etc.

Desirable

Diploma in printing (Lithography from a recognized Institute)".

7. The applicant claims parity of pay scale pertaining to the Ministry of Urban Affairs and Employment. Therein, so far Assistant Artist Retouchers are concerned, the qualifications are:-

" (i) Matriculation or equivalent.

(ii) Diploma/Certificate in Lithography, Litho-Art work and retouching from a recognised School of Printing and three years experience as a Retoucher in a photolitho establishment of repute.

Or

Certificate of successful completion of apprenticeship under the Apprentices Act, 1961 (52 of 1961) and three years experience as a Retoucher in a Photolitho establishment of repute.

Note: The qualification(s) regarding experience is/are relaxable at the discretion of the Union Public Service Commission/ Staff Selection Commission/ Competent Authority in the case of candidates belonging to Scheduled Castes or Scheduled Tribes if at any stage of selection the U.P.S.C./ Staff Selection Commission/ Competent Authority is of the opinion that sufficient number of candidates from those

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communities possessing the requisite experience are not likely to be available to fill up the vacancy reserved for them".

8. From the aforesated it is clear that even the educational qualifications for the post held by the applicant and the similaly situated persons in other Ministries are totally different. As in the post held by the applicant, Diploma/Certificate in Lithography or certificate of successful completion of Apprentices is not mandatory as in the other case. Different scales can be prescribed even when there is difference in the educational qualifications for the post besides duties. The difference in the qualification is patent and, therefore, the applicant cannot plead hostile discrimination.

9. For the reasons given above, OA is without any merit and is dismissed.

*Naik*  
( S.K.Naik )  
Member (A)

*V.Agg*  
( V. S. Aggarwal )  
Chairman

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