

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1613/2001

New Delhi, this the 4th day of September, 2003

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.K. NAIK, MEMBER (A)

1. Supervisor's Welfare Association,
(Directorate of Social Welfare, N.C.T. of Delhi),
through its Secretary, Mrs. Urmila Shukla,
W/o Shri S.B. Shukla,
R/o Charan Singh Complex,
Village Saidulajab, P.O. Mehrauli,
New Delhi - 110 030
2. Mrs. Usha Chauhan,
W/o Shri Sunil Kumar Chauhan,
R/o WZ/1371, Nangal Rai,
New Delhi - 110 058
3. Miss Magdalini Purti,
D/o Shri P. Purti,
R/o K-III/69, Wireless Colony,
Greater Kailash Part I,
New Delhi - 110 048
4. Mrs. Suman Sharma,
W/o Shri C.B. Sharma,
R/o 213-K/2, Mehrauli,
New Delhi - 110 030
5. Mrs. Ashima Saxena,
W/o Shri R.K. Saxena,
R/o 5/73, Malviya Nagar,
New Delhi - 110 017

Applicants

(By Advocate : Shri G.D. Gupta, Sr. Counsel
with Shri S.K. Gupta)

Versus

1. The Lt. Governor,
Government of National Capital
Territory of Delhi,
Raj Bhawan, Delhi - 110 054
2. The Director,
Directorate of Social Welfare,
Government of National Capital
Territory of Delhi,
1, Canning Street,
Kasturba Gandhi Marg,
New Delhi - 110 001
3. Union of India through its
Secretary, M/o Personnel, Public Grievances and
Pension (DOPT), North Block, New Delhi

Respondents

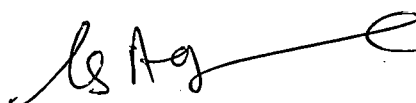
(By Advocate : Shri Mohit Madan proxy for
Mrs. Avnish Ahlawat)

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O R D E RBY HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN :

The applicants are working as Supervisor (Women) in the Integrated Child Development Services Scheme (for short ICDS Scheme) in the Directorate of Social Welfare under the Government of National Capital Territory of Delhi (for short Govt. of NCT of Delhi). The Directorate of Social Welfare, Govt. of NCT of Delhi, is running 28 Integrated Child Development Services Projects under the ICDS Scheme. 139 Supervisor (Women) are working in the said 28 ICDS Projects under the Scheme. Before implementation of the recommendations of the 5th Central Pay Commission, the Supervisor (Women) were working in a single pay scale of Rs.1400-2300. They were all discharging identical duties and responsibilities. The 5th Central Pay Commission prescribed two pay scales for the same post. It decided that Supervisor (Women) should be in the pay scale of Rs.1640-2900/- but chose to give that pay scale by way of upgradation of the post of Supervisor (Women). 52 Supervisor (Women) out of the existing 139 Supervisor (Women) were given the higher scale. The said upgradation was accompanied by redesignation of the posts of Supervisors (Women) to Supervisors (Grade-II) and Supervisors (Grade-I). It was mentioned that the scale of Rs.1640-2900/- would be available after 5 years' service as Supervisor (Grade-II). In this process, 52 out of 139 Supervisor (Women) were placed in the higher scale of Rs.1640-2900/-.

2. The grievance of the applicants is that all the Supervisor (Women) are discharging the same duties and



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responsibilities. Their qualifications, duties and responsibilities are identical and, therefore, two different pay scales cannot be prescribed. By virtue of the implementation of the report of the 5th Pay Commission, 52 Supervisor (Women) are getting the pay scale of Rs.5500-9000/-, while the rest are getting the pay scale of Rs.4500-7000/-. As per the applicants the said distinction is illegal and illogical besides being arbitrary.

3. By virtue of the present application, the applicants seek quashing of the impugned orders of 15.5.2000 and 26.5.2000 whereby they have not been upgraded to the pay scale of Rs.5500-9000/-. They pray that it should be declared that all the applicants are entitled to the pay scale of Rs.5500-9000/-.

4. The OA has been contested. The respondents' plea is that fixation of pay scale and creation of posts are the prerogative of the Government, which is done on the recommendations of the expert bodies like the Pay Commission. It is in the exclusive domain of the Government to grant pay scales. It is pointed that the pay scale of Rs.5500-9000 granted to the 52 Supervisors (Women) is legal and justified. The respondents' plea that the 5th Pay Commission had recommended for restructuring of the organisational set-up to remove the bottle-neck in the promotional avenues for different posts. Keeping in view their duties and qualifications to avoid bottle-neck 52 Supervisors (Women) were allowed a separate higher pay scale. There are 35 posts of Deputy Superintendent for a feeder cadre of 306 posts. It



is denied that there is any discrimination which requires that the orders should be modified.

5. The 5th Central Pay Commission had considered the question pertaining to the award of pay scales and in paragraph 104.65 it noted that some organisational restructuring is necessary in the Department with which we are presently concerned. The Pay Commission thereupon to avoid the bottle-necks that existed at the level of Deputy Superintendent has recommended -

"xxxxx Thus some organisation restructuring is necessary in this department. Accordingly we recommended that following changes may be effected in the organisational set up of the Department of Social Welfare:-

The single post of Adult Education Teacher may be given the ACP scales of Rs.100-2660 and Rs.1640-2900. The incumbent would be eligible for further functional promotion to the post of Deputy Superintendent/PO Grade II in the scale of Rs.1640-2900.

Fifty two of the existing 129 posts of Supervisor (Women) may be upgraded as Supervisor Grade-I in the scale of Rs.1640-29000 with the remaining posts being redesignated as Supervisor Grade-II in the pay scale of Rs.1400-2300. Supervisor Grade-II with 5 years' service would be eligible for promotion as Supervisor Grade-I who, after 5 years' of service in the grade, would be eligible for promotion to the post of Dy. Supdt./PO Grade-II.

Five of the existing thirteen posts of BA-BT Teacher may be redesignated as Senior BA-BT Teachers in the scale of Rs.1640-2900/-. BA-BT Teachers with five years' service in the grade shall be eligible for promotion as Sr. BA-BT Teachers who then would be considered for promotion as Dy. Supdt./PO Grade II after five years of service in the grade.

Fourteen of the existing 35 posts of Craft Instructor may be upgraded as Sr. Craft Instructors in the pay scale of Rs.1640-2900/-. The posts of Sr. Craft Instructor will be filled by promotion of Craft Instructors with 5 years' service in the

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grade. Senior craft Instructor with 5 years' of service in the grade would be eligible for promotion as Dy. Supdt.

Pay scales of Welfare Officer (Grade-II)/Probation Officer (Grade-II) and Prison Welfare Officer may be upgraded to the scale of Rs.1640-2900. They would be eligible for promotion as Deputy Superintendent after 5 years' of service in the grade."

6. It is this particular matter which comes up for consideration whereby some of the posts, which we have already referred to above, have been placed in the higher scale.

7. The learned counsel for the applicant contends that the said order is discriminatory because all the applicants are discharging the same duties, functions and responsibilities as those of others who have been given the higher scale.

8. We note from the decision of the Supreme Court in the case of State of Madhya Pradesh and Anr. v. Pramod Bhartiya and Ors. (JT 1992 (5) S.C. 683) that it is implicit in the doctrine of equality enshrined in Article 14 of the Constitution read with Article 39 (d) that there should be equal pay for equal work. It further came to the conclusion the burden of proof that there is hostile discrimination lies with the persons who come to the Court complaining of the same.

9. While we have noted that the principle for equal pay for equal work has been recognised, but there has to be equality amongst the equals. Non equals cannot claim the said equality. The Supreme Court in the case of Grih Kalyan

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Kendra Workers Union v. Union of India and Others (AIR 1991 Supreme Court 1173) has gone into this controversy and held that similarity cannot be found on a mathematical formula. It is permissible to have classification in services based on hierarchy of posts, pay scale, value of work and responsibility and experience. The Supreme Court held -

"7. xxxxxxxx. While considering this question, it is not necessary to find out similarity by mathematics formula but there must be a reasonable similarity in the nature of work, performance of duties, the qualification and the quality of work performed by them. It is permissible to have classification in services based on hierarchy of posts, pay scales, value of work and responsibility and experience. The classification must, however, have a reasonable relation to the object sought to be achieved. In Federation of All India Customs and Central Excise Stenographers v. Union of India, 1988 (3) SCC 91 : (AIR 1988 SC 1291), Sabyasachi Mukharji, J. (as he then was) observed at page 1297 of AIR :

"There may be qualitative differences as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgement by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgement is made bona fide, reasonable on an intelligible criteria which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right." "

10. Similarly, in the case of The Secretary, Finance Deptt. & Ors v. The West Bengal Registration Service Association & Ors. (1992 (2)SLR 82) the Supreme Court once again held the question that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary. Certain factors like nature of contribution, the extent of responsibility and dependence

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etc. have to be taken into consideration while fixing the pay scales. The Supreme Court observed -

"12. xxxxxxxx. Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the Sub-Registrars to the Second (State) Pay Commission found it difficult to concede the demand made by the Registration service before him in his capacity as the Chairman of the Third (State) Pay Commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."

11. From the aforesaid it is obvious and clear that it is within the domain of the executives to fix the pay scales. They have to take into consideration the relevant factors like nature of duties, responsibilities, experience etc. while fixing the same. If there is a hostile discrimination writ large, in that event the Tribunal would be competent to interfere and press into service the principle of "equal pay for equal work".

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12. In the present case before us, as already referred to above, the 5th Central Pay Commission recommended that 52 persons out of the Supervisor (Women) should be placed in the higher scale of Rs.5500-9000/-, order copy of which is Annexure A-2 dated 26.5.2000 awarding that pay scale as per their seniority.

13. Can it, in the facts of the present case, it ^{be} said to be discriminatory on the ground that the applicants who are also Supervisor (Women) discharge similar functions. In our opinion, the answerer is in the negative. The 5th CPC recommended that in order to avoid the bottle-necks because there existed only 35 posts of Deputy Superintendent, a higher scale was created within the Supervisor (Women). Their number so fixed at 52. This is applicable to all. It is being accorded as per seniority and in turn. The applicants would also be eligible for the said scale on their turn. They cannot term it as a discrimination because seniority necessarily carries more experience. If certain more experienced persons are given a higher scale which does not permanently de-bar the applicants, they cannot plead discrimination. It does not make the applicants not eligible for the said post. Therefore, the plea so raised must necessarily be rejected.

14. A feeble attempt was made to show that the applicants would not be eligible for being considered for the promotional post. Particularly our attention has been drawn to the Recruitment Rules, copy of which is Annexure A-6, for the said promotional post. Even on that count the plea must necessarily be rejected because all persons by virtue of

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their seniority and experience have to be considered and it does not permanently de-bar the applicants from consideration for the said post. Necessarily, therefore, the plea is without merit.

15. For the reasons given above, the application must be held to be devoid of merit and is accordingly dismissed.

No costs.



(S.K. NAIK)
MEMBER (A)



(V.S. AGGARWAL)
CHAIRMAN

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