

Central Administrative Tribunal, Principal Bench

Original Application No.76 of 1999
(M.A.264/2000)

New Delhi, this the 27th day of February, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

1. Chauffeurs'(Class III) Association,
Ministry of External Affairs, South
Block, New Delhi...through its Secretary.
 2. Tilak Raj, President Chauffeurs'(Class
III) Association, Ministry of External
Affairs, South Block, New Delhi.
 3. Jagdish Dahiya, Secretary, Chauffeurs
Association (C-III) C/o Transport Cell,
Ministry of External Affairs, South
Block, New Delhi.
- Applicants

(By Advocate Shri K.C.Mittal)

Versus

1. Union of India through foreign Secretary,
Ministry of External Affairs, South
Block, New Delhi.
 2. Union of India through Secretary
(Expenditure), Department of Expenditure,
Ministry of Finance, North Block, New
Delhi.
- Respondents

(By Advocate Shri A.K.Bhardwaj)

O R D E R

By V.K.Majotra, Member(Admnv) -

MA 264/2000 has been filed by the applicants seeking permission to take on record order dated 13.9.1999 of the respondents extending the facility of allowing Chauffeurs and Group-D Government servant posted to Bangladesh, Nepal, Bhutan and Maldives to take their families along with them on posting at Government expense under the normal transfer travelling allowance rules. The respondents have chosen not to submit their reply to this MA. This MA is allowed and order dated 13.9.1999 being relevant to the issue under consideration is taken on record.

2. Applicant no.1 is Association of Chauffeurs and Staff Car Drivers in the Ministry of External Affairs. Whereas applicant No.2 is a Chauffeur and the

President of the Association, applicant no.3 is also a Chauffeur and Secretary of the Association.

3. In this OA the applicants have challenged the validity of letter dated 26.12.1989 (Annexure-A-1) whereby the respondents have laid down terms and conditions of services of Non-IFS(B) Members of the staff posted in Indian Missions/Posts abroad to the extent that the same is discriminatory vis-a-vis the Chauffeurs/ Staff Car Drivers of the Ministry of External Affairs which is a Group-C post and the Staff Car Drivers are being posted in Indian Mission on official duties but despite being a Group-C post the applicants are being treated at par with Group-D employees in so far as grant of family travelling allowance, furniture, residential accommodation, insurance of personal effects, children education allowance, cutlery and crockery grant and children holiday passages, etc. are concerned. Other allowances are being granted to the applicants at par with officials in Group-C, mainly, LDCs. The applicants have alleged hostile discrimination as part of their benefits are at par with Group-C and the remaining at par with Group-D. The applicants have claimed that they cannot be equated with Group-D employees. They have to be equated with Group-C employees for all purposes. The applicants had made representations and the matter had also been placed before the Joint Consultative Machinery (for short 'JCM') of the Ministry of External Affairs but no final decision has been communicated till the last meeting of the JCM dated 30.6.1998.

4. As per Annexure-A-2 i.e. the Recruitment Rules the post of Staff Car Driver is classified as General Central Service Group-C Non-gazetted,

W

Non-ministerial. The applicants have claimed that being in Group-C, they are entitled for grant of all benefits as Group-C employees and cannot at any cost be treated in respect of any benefit equivalent to Group-D. In terms of the impugned letter dated 26.12.1989 (Annexure-A-1) it has been laid down that except in the matter of passage for family and insurance of personal effects in which matters the provisions relating to Group-D officials will apply, Chauffeurs will be entitled to the same terms as members of IFS(B) belonging to and equivalent pay range. As the applicants fall in the category of Group-C employees in respect of pay range, they have been given benefits partially at par with Group-C and partially with Group-D employees. LDCs and UDCs fall in Group-C. They are allowed all benefits as Group-C employees including the passage for family, insurance of personal effects, furniture, residential accommodation, children education allowance, cutlery and crockery grant etc. The same had been denied to the applicants equating them with Group-D employees in respect of these aspects. According to the applicants JCM had taken note of aforesaid issues in its meeting held on 5.10.1994. The matter was included in the 60th meeting of JCM held on 25.4.1997 but no decision was taken. Vide letter dated 10.2.1993 (Annexure-A-9) respondents had allowed these benefits to the applicants for SAARC countries on an experimental basis and the facility was subject to review after three years. Vide letter dated 13.9.1999 the facility extended vide Annexure-A-9 has been extended until further review. The applicants have sought quashing of impugned order dated 26.12.1989 to the extent it equates them with Group-D employees in matters of passage for family, insurance of personal effects, etc. They have

↓

also sought declaration that the applicants in Group-C are entitled for all allowances and benefits as admissible to other Group-C employees for grant of travelling allowance for the family, residential accommodation for the family, children holiday passage, cutlery and crockery grant, furniture, insurance of personal effects, foreign allowance, single dependent parents passage, emergency passage etc.

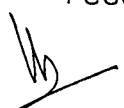
5. In their counter the respondents have stated that letter dated 26.12.1989 was an amendment to the original letter dated 14.5.1964^{1964 b} (Annexure-R-1) which contained terms and conditions for non-IFS(B) official and formed a separate part of rules under the IFS(Pay, Leave, Compensatory Allowances etc) Rules (hereinafter referred to as 'the IFS(PLCA) Rules'). That letter was amended from time to time. According to the respondents even in 1964 Chauffeurs of Class-III status were granted the same benefits as are admissible to them today. They were permitted to take their families to some neighbouring Missions such as Sri Lanka, Pakistan and Burma. This benefit was available to Security Guards and Group-D officials as well. The basis of this facility was the security consideration and proximity of these stations to India and the life standards and cost of living comparable to India. The respondents have stated that the extension of IFS (PLCA) Rules to IFS (B) and non-IFS(B) personnel was related to functional obligations and service liabilities. According to them impugned letter dated 26.12.1989 is not illegal, arbitrary and discriminatory or violative of Articles 14 and 16 of the Constitution as the applicants form a distinct category other than IFS(B) and are governed by rules framed for non-IFS(B) in 1964.

[Handwritten signature]

6. The respondents have contended that the functions of LDCs and Chauffeurs are different. Their recruitment rules and service conditions are different. While Chauffeurs are compensated with payment of overtime allowance for their functions outside office hours in Missions/posts abroad, LDCs/UDCs are not entitled to such allowance whenever they have to work outside office hours. In addition, the Chauffeurs are entitled to liveries as provided to Group-D staff. Thus, the Chauffeurs are availing of all facilities admissible to Group-D employees to which other Group-C employees are not entitled, however, they are now seeking parity with Group-C employees of IFS(B). In view of the distinct functions and duties of Chauffeurs, they are mainly housed either in the premises of the Chancery or at the residence of the Head of Mission due to functional requirements. Simply because their pay scales are identical with Group-C employees, the Chauffeurs cannot be treated at par with Group-C employees for all purposes. The respondents have further pointed out that the method of recruitment of LDCs and Chauffeurs are different. Whereas the requisite qualification for the post of Chauffeurs is 8th passed, it is Matriculation for LDC. Further, whereas Chauffeurs are appointed by promotion from Peons or through Employment Exchange against non-ministerial post, LDCs are recruited through all India open competition conducted by Staff Selection Commission.

7. The applicants have filed rejoinder also.

8. We have heard the learned counsel of both sides at length and perused the material available on record.



9. Shri K.C.Mittal, learned counsel of the applicants contended that vide Annexure-A-2 Government have classified Staff Car Drivers as 'General Central Service Group-C, Non-gazetted, Non-ministerial'. When ordered to go abroad on a posting applicants do not have any choice with them and having been placed in Group-C, Non-gazetted, Non-ministerial post like LDC, they should be granted all facilities and benefits like Group-C officials. Letter dated 26.12.1989 has allowed some benefits of Group-C to Chauffeurs and denied other benefits as are denied to Group-D officials. According to learned counsel of applicants this is highly discriminatory to equate applicants with Group-D officials for some benefits. According to him, applicants have to be extended all benefits which have been provided to other Group-C officials. By applying provisions relating to Group-D officials in respect of such matters unequals have been treated equally which is violative of provisions of Article 14 of the Constitution. The learned counsel has further contended that denial of various benefits to Chauffeurs as are available to Group-C officials is a recurring cause of action since 1964. Extension of ^{additional} benefits to Chauffeurs vide memo dated 30.9.1999 for SAARC countries strengthens the case of applicants all the more. According to the learned counsel denial of certain facilities as available to Group-C employees on the plea of functional differential is ^{unjustified} and does not meet the test of provisions of Article 14. If Chauffeurs are posted abroad, they have to be extended all benefits and facilities as are available to Group-C employees.

Wb

10. Shri A.K.Bhardwaj, learned counsel of respondents contended that the matter contained in memo dated 26.12.1989 is a policy decision of the Government and involves national interest. Chauffeurs have been classified in Group-C for purposes of pay scale and cannot be accorded terms and conditions as are applicable to rest of Group-C officials. According to him benefits as available to Class-C employees in SAARC countries have been made available to Chauffeurs as well but reasons are that these countries are geographically closer to India, their languages are akin to Indian languages ^{but by} grant of facilities like passage for family etc. ^{in other countries by} would cause hindrance in performance of functions and duties of Chauffeurs. The learned counsel has drawn distinction between Group-C employees such as Clerks and Staff Car Drivers stating that whereas Chauffeurs facilitate a position held by another official, a Clerk does not and that is why Chauffeurs are provided overtime allowance and other allowances for discharging functions and facilitating the position held by the head of the office or head of the Mission. The learned counsel raised plea of doctrine of acquiescence contending that a policy of denial of certain benefits as available to Class-C to Chauffeurs has been there since 14.5.1964 (Annexure-R-1). He further stated that doctrine of promissory estoppel also hits Chauffeurs because when they are appointed they are not extended any assurance for foreign deputation and when they accept foreign assignment, they go on terms and conditions prescribed for them.

11. The first issue raised by learned counsel of respondents Shri Bhardwaj is that impugned order dated 26.12.1989 laying down terms and conditions of services of non-IFS(B) members including Chauffeurs in Ministry

of External Affairs falls within the domain of policy decision by the Government and that the Tribunal cannot interfere with policy making of the Government. According to him terms and conditions laid down in the impugned order for Chauffeurs were prescribed for national interest. Shri Bhardwaj relied on Eastern Railway Class II Officers Association & others Vs. Union of India and others, 1992 (1) SLJ 125 in which it has been held that policy decision made by the Government cannot be challenged unless there is a vice of malafide, arbitrariness or it is bereft of any discernible principle. He also referred to the case of Thankamma John Vs. Union of India, 1994 (1) SLJ 482 in which Ernakulam Bench of the Tribunal has held that in a matter of policy simplicitor it is not for the Court or Tribunal to issue directions or substitute its view in place of the views of the competent authority. Judicial review always lies if there is arbitrariness, or malafide in the exercise, or if there is a breach of statutory provision. Shri Mittal, learned counsel of applicants contended that in the present matter no policy issue is involved. According to him, policy issue was classification in which Chauffeurs or Clerks were to be kept. Amalgamation, merger of cadres, closing down a department, creation of a new Ministry/ Department, creation of a post, etc. are policy matters. In the present case classification of Chauffeurs in Group-C was a policy matter but grant of some benefits of Group-C and denial of other benefits of Group-C to Chauffeurs is not related to a policy matter. The applicants could have been kept in Group-D and denied all benefits of Group-C but once they had been kept in Group-C all benefits of Group-C have to be granted to them and interference by the Court in the

Wb

matter of denial of some benefits of Group-C to Chauffeurs who belong to Group-C is justified. We are in agreement with the line of argument adopted by Shri Mittal on behalf of the applicants. Classification of Government servants in various groups is certainly a policy matter. Denial of grant of certain benefits to a particular group of employees when such benefits have been allowed to other constituent of the group cannot be said to be a policy matter and even if it is, the Court can look into the reasonableness of denial of such benefits and interfere with the same if arbitrariness or absence of any discernible principle is noticed in the same.

12. As per Annexure A-2 which is schedule of the recruitment rules, Staff Car Drivers have been classified as 'General Central Service Group-C Non-gazetted, Non-ministerial.' It has not been denied by respondents that LDCs have also been classified similarly. Shri Bhardwaj, learned counsel of respondents has contended that as per Annexure-R-1 dated 14.5.1964 relating to terms and conditions of service of non-IFS(B) members of staff posted in Indian Missions/ posts abroad, travelling allowance etc., for Chauffeurs holding Class-III status, since 14.5.1964, has been as follows:-

"Chauffeurs holding class III status on the date of their transfer and belonging to Grade III under S.R.17 will be entitled to the same terms as members of IFS(B) belonging to an equivalent Grade except in the matter of passage for family, insurance of personal effects and entitled class of travel in which matters the provisions relating to class IV government servants as laid down in sub-para (b) above will apply."

Shri Bhardwaj, learned counsel stated that applicants had never challenged such terms and conditions for such a long time and, therefore, they cannot be allowed to do so in view of doctrine of acquiescence. He contended

12

that having full knowledge of their rights, their neglect in disputing rights of another or to enforce their own rights, they will be debarred from enforcing their rights and from questioning others' rights. They have acquiesced in the act or the rights of others and have to suffer from estoppel by conduct. Shri Mittal, learned counsel stated that the matter has been pending consideration of JCM and in this context he referred to Annexure-A-5 which is the action taken report in respect of issues dealt with by the JCM in its meeting of 5.10.1994. According to him, this matter cropped up for consideration of JCM from time to time. As per Annexure-A-7, which is the action taken report of 60th Meeting of JCM ^{dt. 25.9.97. lb} the matter was deferred again as per item 57.16. Vide letter dated 10.2.1993 (Annexure-A-9) benefits demanded by applicants in present OA were accorded to them for SAARC countries for a period of 3 years and the facility was to be reviewed thereafter. These facilities have been extended further to Staff Car Drivers working in SAARC countries. The learned counsel contended that all this establishes that applicants had not acquiesced their rights and the issue had been under consideration of the Government for a long time and the Government have conceded applicants' right in SAARC countries since 1993. We are inclined to go along with learned counsel of applicants that present case is not hit by doctrine of acquiescence.

13. The next point raised by Shri Bhardwaj, learned counsel of respondents is that Staff Car Drivers have been accepting their posting abroad as per terms and conditions laid down by the Government which do not accord them same facilities of Group-C, therefore, doctrine of promissory estoppel would prohibit them from seeking benefits which were not contained in terms and

36

conditions of their posting abroad. Learned counsel of applicants contended that on posting or transfer abroad applicants do not have any freedom to refuse acceptance of the order. They are bound to obey orders of posting/transfer abroad. They have no freedom not to proceed on posting abroad. In this view of the matter, there is no question of extending any promise by their words or conduct by applicants to the Government, which may create any legal relations or effect any legal relationship to arise in future between them as employees and the Government. In case applicants refuse to go on posting abroad, they would be accused of misconduct and disciplinary proceeding leading to punishment under the Conduct Rules can be initiated against them. ~~-----~~^b We agree with the learned counsel of applicants that proceeding on a posting abroad by applicants on the basis of terms and conditions of their posting does not involve any promissory estoppel and applicants are within their rights to assail such terms and conditions of foreign posting without being hit by doctrine of estoppel.

14. Shri Mittal has contended that since applicants belong to Group-C as per classification prescribed in Annexure-A-2 they are entitled to all benefits and facilities which are accorded to members of Group-C when they are posted abroad. Non-grant of any such facilities or benefits which are available to other members of Group-C like LDCs is highly discriminatory. Shri Mittal has relied on following decisions :-

(i) Abid Hussain and others Vs. Union of India and others, AIR 1987 SC 820 wherein it has been held that overtime allowance for extra duty hours to the Air-conditioned Coach Incharge Attendants in one Railway

12

cannot be denied on the same basis to the Air-conditioned Coach Incharge Attendants in another Railways;

(ii) Gauri Shanker and others Vs. Union of India and others, (1994) 6 SCC 349 wherein it was held that "[E]quals should not be treated unlike and unlikes should not be treated alike. Likes should be treated alike. In giving effect to the said salutary principle, a mathematical precision is not envisaged and there should be no fanatical or 'doctrinaire' or wooden approach to the matter. A practical or realistic approach should be adopted. It is open to the State to classify persons or things or objects, for legitimate purposes". The learned counsel stated that having classified applicants in Group-C all benefits accorded to other members of Group-C must accrue to applicants as well.

(iii) State of Madhya Pradesh and another Vs. Pramod Bhartiya and others, AIR 1993 SC 286. In this matter equality of pay for equal work was held to be implicit in Articles 14 and 16 (1) of the Constitution of India. In such matters similarity of skill, effort and responsibility have to be proved and the burden of provision is on one complaining of discrimination. The learned counsel stated that applicants are not demanding equal pay for equal work. Therefore, the burden is not on them to prove discrimination. They have been classified as Group-C and they are demanding same benefits as accorded to other belonging to Group-C. The question of equal work does not arise in the present matter. Therefore, the issue involved here is that they have to be accorded same benefits and facilities having been classified in the same class whose members are getting additional or greater benefits or facilities.

According to the learned counsel of applicants, it is not for applicants to prove that they have been discriminated against. Discrimination is writ large in the words of the impugned order itself when they have been equated with Group-D officials in matters of transfer grant, passage for family, insurance of personal effects, etc. although they have been classified in Group-C like LDCs. We are satisfied here that discrimination is not to be proved by applicants as they have been equated with Group-D in the impugned order in respect of various matters mentioned above.

(iv) Union of India and others Vs. No.664950 IM Havillar/ Clerk SC Bagri, JT 1999 (3) SC 124 in which whereas study leave was allowed to Commissioned Officers in the Army, it was not allowed to Junior Commissioned Officers and non-commissioned officers. While considering the question of whether classification was arbitrary it was held that classification is based on intelligible differential and hence it is not violative of Articles 14 & 16. Equality means equality as between members of the same class. Applying this ratio to the facts of the present case once applicants have been classified in Group-C, they have to be granted facilities and benefits as available to other members of Group-C. Down grading them to the level of Group-D for purpose of denying them same benefits relating to Group-C is highly discriminatory and violative of provisions of Articles 14 and 16 of the Constitution.

(v) United Bank of India Vs. Meenakshi Sundaram and others, JT 1998 (1) SC 179 wherein it was held that "direct recruits cannot be placed on the same pedestal as the officers already working in the Bank and being transferred to the North-Eastern region". The transferred officers were given certain incentives. the

direct recruit officers on their first posting in North-Eastern Region were not given those benefits. It was held a "direct recruit has a choice whether to join the service of the Bank or not. If he does, he runs on the risk, if it is risk, of being posted in the North-East region on his first posting". The policy devised by the Bank for introduction of incentives to its transferred employees in consideration of the prevalent conditions in North-East region and the reluctance of its experienced officers to be transferred to that region was not interfered with. The distinction between local and non-local officers in North-East region was maintained. When the Court has upheld grant of additional benefits on transfer, denial of such benefits in the present case cannot be countenanced at all.

15. It seems that intention behind non-grant of some benefits as are available to Group-C employees posted in Missions/ posts abroad is not to discriminate Staff Car Drivers by equating them as Group-D employees but financial considerations. The ratio in the cases of Frank Anthony Public School Employees' Association Vs. Union of India and others, AIR 1987 SC 311 and Hans Ram Arora Vs. Union of India and others, 1988 (Supp) SCC 564 is that financial implications showing additional burden on the Government in according justified benefits to the employees cannot come in the way. In the present matter also financial hardship or incapacity of the Government to bear the additional burden involved in granting some benefits as made available to other members of Group-C when posted abroad, cannot be taken cognizance of in the teeth of down gradation and

discriminatory treatment meted out to Staff Car Drivers while posted abroad in the matter of benefits and facilities discussed above.

16. Having regard to the above reasons and discussions, we are of the considered view that the applicants have proved their case in ample measure and order dated 26.11.1999 equating applicants with Group-D employees in matters of passage for family, insurance of personal effects etc. must be quashed.

17. In the result, the OA is allowed. The impugned order dated 26.11.1999 is quashed qua Chauffeurs equating them with Group-D employees in certain matters. The respondents are further directed to consider prospectively grant of allowances and benefits to Chauffeurs as are available to other Group-C employees particularly LDCs while on posting to foreign missions/ posts as have hitherto been denied to them. The respondents shall comply with these orders within a period of two months from the date of communication of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (Admnv)