

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A./T.A. No. 2416/94 /19

Decided on: 11.4.96

Shri Rohtas Singh & ors.

(By Shri V.P. Sharma

..... APPLICANT(S)

Advocate)

VERSUS

U.O.I. & Ors.

(By Shri Rajinder Pandita

..... RESPONDENTS

Advocate)

CO RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI~~/SMT./~~SH~~. LAKSHMI SWAMINATHAN, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No

S.R. Adige
(S.R. ADIGE)
Member (A)

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A.No.2416 of 1994

New Delhi, dated the 11th April, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

1. Shri Rohtas Singh,
S/o Shri Galav Singh
 2. Shri Ram Kishan
S/o Shri Khamani
 3. Shri Ganga Parshad,
S/o Shri Shyan Singh
 4. Shri Ramjilal
S/o Shri Lal Singh
 5. Shri Rampat,
S/o Shri Khamani
 6. Shri Jgdish
S/o Shri Triloki Ram
 7. Shri Pyrelal,
S/o Shri Kare Singh
 8. Shri Sadaram
S/o Shri Mangal Singh
 9. Shri Phool Singh
S/o Shri Dhani Ram
 10. Shri Hardayal
S/o Shri Todi
 11. Shri Sita Ram
S/o Shri Bachoo Ram
 12. Shri Vash Dev,
S/o Shri Bhagwati Parshad
 13. Shri Dharam Singh,
S/o Shri Mithan Lal
 14. Shri Nanak Ram,
S/o Shri Lekhram
 15. Shri Prabhu Singh
S/o Shri Jawani Singh
 16. Shri Budh Kant,
S/o Shri Gaja Ghar,
 17. Shri Gulab Singh
S/o Shri Duli Singh
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18. Shri Kalu Ram,
S/o shri Mam Chand
19. Shri Anup Singh,
S/o Shri Sant Singh
20. Shri Ram Kirpal,
S/o Shri Sallu Ram
21. Shri Mange Ram,
S/o Shri Chhotu Ram
22. Shri Laxmi Chand,
S/o Shri Kehar Singh
23. Shri Laxmi Chand,
S/o Shri Banwari Lal
24. Shri Sukhbir Singh
S/o Shri Baktawar Singh
25. Shri Ram Kishan
S/o Shri Sri Chand
26. Shri Mange Ram,
S/o Shri Sunde
27. Shri Hem Chander,
S/o shri Tara Chand
28. Shri Om Parkash Sharma,
S/o Shri Harnacharan
29. Shri suraj Bhan,
S/o Shri Kalu Ram
30. Shri Hoe Ram,
S/o Shri Roopa
31. Shri Mangal
S/o Shri Bishram
32. Shri Faquir Chand,
S/o Shri Mangat Ram
33. Shri Sukh Mangal,
S/o Shri Chirde
34. Shri Dalip Singh
S/o Shri Sudhe
35. Shri Jai Pal Singh,
S/o Shri Bhule
36. Shri Banthi lal,
Shri Parag
37. Shri Chattar Pal,
S/o Shri Sukhram
38. Shri Raja Ram,
S/o Shri Ram Saran

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39. Shri Deeg Ram
S/o Shri Jai Singh
40. Shri Jadu Ram
S/o Shri Makum Ram
41. Shri Prahlad Singh
S/o Shri Meer Singh
42. Shri lal Singh
S/o Shri Ram Swaroop
43. Shri Ram Narain,
S/o Shri Chander Kant Kar
44. Shri Bhagat Singh
S/o Shri Khem Chand
45. Shri Karam Singh
S/o Shri Dharam Singh
46. Shri Triloki Nath
S/o Shri Ram Pawrath
47. Shri Dinesh Parshad
S/o Shri Johri Chaudhry
48. Shri Giriraj
S/o Shri Sohan Lal
49. Shri Ashok Kumar
S/o Shri Laxman Singh
50. Shri Ram Swaroop
S/o Shri Ghasi Ram
51. Shri nankoo Ram
S/o Shri Ram Lot
52. Shri Jeet Ram
S/o Shri Ram Chander
53. Shri Kunwar Singh
S/o Shri Jaswant Singh

(All are working as Malies in
the Office of Development Commissioner,
National Capital Territory
of Delhi, Under Hill Road, Delhi
C/o Shri Om Parkash Sharma,
Puran Silampur,
Gandhi Nagar,
Delhi)

..... APPLICANTS

(By Advocate: Shri V.P. Sharma)

VERSUS

1. Union of India through
the Secretary,
Ministry of Home Affairs,
Govt. of India,
New Delhi.
2. National Capital
Territory of Delhi
Through the Chief Secretary,
Old Secretariat,
Delhi.
3. The Development Commissioner,
N.C.T. of Delhi, Development Deptt.,
5/9 Under Hill Road,
Delhi-110054.
4. Dy. Development Commissioner,
Dept. of Development
(Horticulture),
5/9 Under Hill Road,
Delhi-110054. RESPONDENTS

(By Advocate: Shri Rajinder Pandita)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri Rohtas Singh and 52 others all are working as Malis in National Capital Territory of Delhi in the pay scale of Rs.775 - 1025 have sought for a declaration that

- (i) the post of Mali in Dept. of Development, N.C.T. of Delhi is semi-skilled in line with the CPWD Award.
- (ii) to extend to them the scale of Rs.800-1150 which is being allowed to CPWD Malis as a result of that award, with revised pay fixation and consequential benefits w.e.f. 1.1.73.

2. The applicant's case is that they as well as the CPWD malis were in the pay scale of Rs.196 - 232 w.e.f. 1.1.73 and consequent to the Fourth Pay Commission's recommendation, the scale of pay was revised to Rs.750-940 w.e.f. 1.1.86. It is stated that the Mazdoor/employees of the CPWD including Bhisty, Mali, Bullocman, Packer, etc. raised an industrial dispute under IDA Act, 1947 and an award was granted on 31.1.88 whereby the post of malis was classified as semi-skilled, in consequent to which the pay scale of CPWD malis was revised ~~from~~^{to} Rs.210-290 w.e.f. 1.1.73 which was further revised to Rs.800-1150 w.e.f. 1.1.86, and the arrears of difference of pay consequent to revised pay fixation was paid to the CPWD malis. It is further stated that a writ petition was filed before Delhi High Court against that award which was decided on 28.1.92 (Annexure P-9) and the award in question was upheld with certain modifications. It is further stated that the applicants through their recognised union submitted a representation to the Respondents on 18.7.94 (Annexure A-4) for extension of the benefits of that award to themselves, which had been implemented in respect of CPWD malis vide CPWD Office Memorandum dated 20.12.1993 (Annexure-A-1) and (Annexure A-3) but without result. It is contended that the malis working in Development Deptt. of the NCT of

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Delhi are discharging similar duties, functions and responsibilities as are discharged by CPWD malis and there is no difference in the service conditions, classifications and nature of duties. Hence the applicants are also entitled to the benefit of the award for the purpose of reclassification grant of pay scale of Rs.210 - 290 w.e.f. 1.1.73 and Rs.800 - 1150 w.e.f. 1.1.86, along with arrears of difference of pay and other consequential benefits.

3. The Respondents have contested the O.A. They point out that the applicants have failed to exhaust the departmental remedies available to them and that the O.A. is also hit by non-joinder of necessary parties. It has been averred that the applicants have been given the benefit of in situ promotion in the pay scale of Rs.775 - 1025 w.e.f. 1.4.91, on reaching the maximum of their pay scale vide order dated 7.12.93, based on the Finance Ministry's Memorandum dated 13.9.91. It is also submitted that the Recruitment Rules for the post of malis in the N.C.T. of Delhi specify no educational qualifications, special qualifications, trade test, etc. and the post of mali has not been classified as skilled, semi-skilled^{sk} as in CPWD. It is also submitted that the nature of malis in the CPWD is different from malis under NCT OF Delhi.

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4. As regards relief (i) at the outset it must be stated that no foundation has been laid to enable the Tribunal to declare the applicants as semi-skilled on the lines of the Award under the I.D. Act in respect of the C.P.W.D. Malis. Merely because as per the III and IV Pay Commission's recommendations, the applicants were drawing the same pay scale as the CPWD Malis, and the CPWD Malis subsequently secured an award in their favour declaring the nature of their work to be semi-skilled, does not automatically entitle the applicants to be declared as semi-skilled, unless the competent authority records a finding on facts that they are indeed performing semi-skilled functions. We have no such finding on facts arrived at by the competent authority in the case of the applicants and in the absence of such finding we are unable to grant relief (i) to the applicants.

5. In so far as relief (ii) is concerned, the same can succeed only if the applicants can establish to the Tribunal's satisfaction that they are performing the same work and discharging the same responsibilities as the CPWD Malis, under the principle of "equal pay for equal work". We note that the Recruitment Rules for the post of Malis in CPWD requires the posts to be filled up by direct recruitment. Preference in direct recruitment is to be given to Muster Roll employees who have been engaged

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through Employment Exchange, and they are required to possess experience of minimum of two years continuous service as Muster Roll worker in CPWD. Those who have put in atleast 240 days on Muster Roll (including broken periods) in each of two consecutive years shall be eligible for appointment and it is only in the absence of eligible muster roll employees should a reference be made to the Employment Exchange for sponsoring candidates for direct recruitment. Furthermore these recruitment rules require the candidates to have an elementary knowledge of gardening with agricultural background. They must be conversant with gardening operations, and are also required to qualify in a departmental test in digging, trenching and preparation of beds.

6. No such requirements are postulated in respect of NCTD Malis. In their cases, the Recruitment Rules only prescribe that 50% of posts are to be filled by direct recruitment while 50% are to be filled from part time Group 'D' employees who have served as part time workers in local offices of Delhi Administration. In fact there are no separate Recruitment Rules for NCTD Malis, but they are bracketed with Chowkidars/ Watchmen/Bhistis/Farashes/Khallasis/Sweepers and other Class IV posts for purposes of recruitment vide Delhi Admn. Notification No. F.2(14)/87-S II dated 10.6.87.

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7. In so far as the duties of CPWD Malis are concerned, the Directorate of Horticulture CPWD's letter dated 18.1.96 refers to CPWD Manual Vol.III 1984 which describes the duties of Malis as covering all garden operations including maintenance and care of permanent features of gardens, such as lawns, shrubs, hedges and trees including sweeping of leaves and litter from the garden. On the other hand the duties of Malis under the Horticulture Unit of Development Deptt., Delhi Administration as described in the note of the Dy. Director (Hort.) Development Dept., Govt. of Delhi dated 2.2.96 shown to us by the parties which is also taken on record describes those duties to be to assist the fruit and vegetable specialist, Horticulture Assistant, as well as salesman for sale of input required in the Horticulture crops for input sale centre in NCT of Delhi."

8. We can proceed only on the basis of such materials as are placed before us, and prima facie the materials referred to above are inadequate to arrive at a finding of equivalence between the duties and responsibilities of NCT, Delhi Malis vis-a-vis those in CPWD. Such an evaluation in our opinion can be conducted only by an expert body such as the Pay Commission which has the necessary ^{reports} personnel and expertise to go into the matter in detail. We are

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fortified in our view by the Hon'ble Supreme Court's ruling in State of U.P. Vs. J.P. Chaurasia AIR 1989 SC 19, which lays down that evaluation of duties and responsibilities of respective posts to determine their equivalence is a matter ^{best} ~~best~~ left to expert bodies like the Pay Commission, whose recommendations should normally be accepted by Courts. Now that the V Pay Commission is in session, it is only ^{fit} ~~fit~~ and proper that the applicants' case be placed before that High Powered Expert body if not already done.

9. Applicants' counsel has relied upon the case of UOI & Ors. Vs. Shri D. Kar & Ors. JT 1995 (5) SC 543 in support of his clients' claim for upgradation of pay scales to that of CPWD Malis. That case is however, distinguishable on facts from the present one, because in that case, consequent to the revision of the pay scales of Draughtsmen Grades I, II & III, as a result of an Arbitration Award dated 20.6.80, the Finance Ministry, Govt. of India themselves issued an O.M. dated 13.3.84 directing that the scale of pay of draughtsmen Grades I, II & III in offices/departments of GOI other than CPWD may also be revised as per, revised CPWD scales provided that their recruitment qualifications were similar to those

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prescribed for CPWD draughtsmen, while those who did not fulfil the said qualifications would continue in the pre-revised scales. After considerable litigation the Finance Ministry, GOI, subsequently issued O.M. dated 19.10.94 extended the revised pay scales admissible to CPWD draughtsmen, Grades I, II & III as a result of the Award, to draughtsmen Gd.I, II & III irrespective of recruitment qualifications in all offices/ departments of the GOI, subject to certain minimum period of service. In the present case before us, no such formal directions have been issued by the respondents, who have contested the equivalence of duties and responsibilities on the basis of which the claim for parity in pay scales have been made.

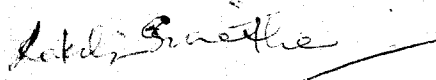
10. It must also not be forgotten that while the CPWD Malis work under the Central Govt., the Malis of the NCTD work under a State Govt., and form a separate class by themselves.


11. In the result we find ourselves unable to issue the directions prayed for by the applicants. However, in the event that the case of the applicants has not been forwarded to the V Pay Commission as yet, it will be open to the applicants to file a self-contained representation to the respondents on receipt of which the



respondents will forward the same to the 5th Pay Commission, with their own comments there on, within two months of its receipt.

12. This O.A. is disposed of in terms of the contents of paragraph 11 above. No costs.


(LAKSHMI SWAMINATHAN)
Member (J)


(S.R. ADIGE)
Member (A)

/GK/