

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1170/89
T.A. No.

198

DATE OF DECISION

23.11.80

Sudama Prasad

Petitioner

Shri A.K.Behra,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mrs. Raj Kumari Chopra,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.C. Jain, Member(Administrative)

The Hon'ble Mr. J.P. Sharma, Member(Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. Whether it needs to be circulated to other Benches of the Tribunal? *NO*

MGIPRRND-12 CAT/86-3-12-86-15,000

Done
(J.P. Sharma)
Member (Judl.)

Done
(P.C. Jain)
Member (Admn.)

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 1170/89

DATE OF DECISION: 23. 11. 90.

SUDAMA PRASAD

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

..RESPONDENTS

SHRI A.K. BEHRA

..COUNSEL FOR THE APPLICANT.

MRS. RAJ KUMARI CHOPRA

COUNSEL FOR THE RESPONDENTS.

CORAM:

HON'BLE SHRI P.C. JAIN, ADMINISTRATIVE MEMBER

HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA)

The applicant, a Constable-driver in C.B.I., filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the decision of the respondents for non-application of the principles of 'equal pay for equal work' and not giving the applicant the scale of pay which is being allowed to the constable-driver in Delhi Police and R.P.F. The applicant claimed the relief that the respondents be directed to apply the scales of pay along with grade system of constable-drivers in RPF and Delhi Police w.e.f. 1.1.1984 and all consequential benefits including arrears of pay be allowed to the applicant.

2. The applicant filed this application in a representative capacity on behalf of constable-drivers of Central Bureau of Investigation and an application to this effect was also moved under Rule 4 sub-rule 5

of C.A.T. Procedure Rules, 1987 in MP 1308/89. This MP was allowed, under the impression that all the applicants had joined in the application, by the order dated 7.6.1989 but there is a preliminary objection that all those constable-drivers of C.B.I. have not been mentioned by name nor verified the application. As such this application cannot be said to be an application in a representative capacity on behalf of all the constable drivers of C.B.I.

3. The learned counsel for the applicant has left to the Tribunal to treat this applicant in the best interest of the applicant and as such this application shall be treated to have been filed only by the applicant Shri Sudama Prasad and not by any other similarly situated constable-driver of C.B.I.

4. The facts of the case are that the applicant is constable-driver in CBI and is working at present in the scale of Rs.950-1400. The contention of the applicant is that the constable drivers employed in Railway Protection Force and Delhi Police while discharging identical duties/functions as constable-drivers in CBI are being given scales of pay in three different grades namely, Rs.950-1500, Rs.1300-1800, and Rs.1320-2040. The disparity in the pay scales of the constable drivers in CBI, where the applicant is employed, and that the RPF and Delhi Police is in gross violation of the principles of 'equal pay for equal work' which the Hon'ble Supreme Court has again declared to be the fundamental right of an employee. On the basis of the judgement of the Hon'ble Supreme Court, the applicant

made a representation to the respondents but the pay scales of the applicant was not revised. The contention of the applicant is that two posts, under two different wings of the same Ministry, are identical but also involved the performance of the same nature and duties and it will be unreasonable and unjust to discriminate between the two in the matter of pay and condition of service. It is further stated by the applicant that non-application of the principle of equal pay for equal work in the case of one set of Government servants holding same or other similar posts, and doing the same kind of work, as another set of government servants, will be discriminatory and violative of Article 14 & 16 of the Constitution.

The respondents opposed the application and besides taking a preliminary objection to the maintainability of the application, it is stated that the applicant is only a constable and not a constable-driver in C.B.I. According to respondents, there is no cadre of constable-driver in CBI. The constables in CBI generally performed duties mentioned at Annexure R-1 which inter alia include driving government vehicles in CBI. Merely by attending to the driving duty, the designation does not become constable-driver in CBI. The applicant has no legal right to ask for the grade system of constable drivers prevailing in the organisations like RPF and Delhi Police. It is further stated that CBI is basically the deputation oriented organisations and in the various executive ranks, there exists the deputation quota. The various posts under deputation quota are filled by appointment of officials holding equivalent posts in State/Central Police organisations. The officers of RPF and Delhi Police included in the pay scale of Rs.1200-1800 and Rs.1320-2040 are, therefore appointed in CBI on deputation basis in the cadre of ASI and not in the cadre of constables. According to the terms

of deputation, the deputationists are entitled either for the grade pay of the post held by them in their parent cadre, or for the pay scale to the post held on deputation in CBI. The Bureau has got a fleet of 139 vehicles. However, the number of constables performing driving duties is not fixed. From the data available about 200 persons are holding the valid driving licence and they are deputed for driving duties at one time or another. According to the respondents, the position in RPF and Delhi Police is entirely different. These organisations have a large fleet of vehicles and therefore these organisations have a separate cadre for drivers who do driving only during the course of their service/duty, Whereas the constables in the CBI performs various functions as already enumerated in Annexure R-1. These duties are detailed below:

1. Assisting investigating officers in their field work while conducting raids, searches etc.
2. Watching the activities of suspected accused in specific cases.
3. Carrying documents and securing the presence of witnesses for examination by the Investigating Officers
4. Keeping guard over case property during investigations.
5. Serving summons and executing warrants issued by Courts in CBI cases.
6. Performing guard duties in the CBI office.
7. Performing duties of a driver for Govt. vehicles in CBI.
8. Carrying dak to local offices.
9. Acting as Messenger's for conveying urgent information between CBI Officers and others in the course of investigation and other work.
10. Making out copies of documents in simple cases as and when required for investigation.
11. Attending telephone calls and receiving visitors to CBI office.
12. Performing such other duties as may be allotted to them by the Duty Officer and other superior officers.

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It is further stated that there is no parity between the constables in RPF and Delhi Police because they are recruited for the purpose of driving only, which duty they are performing during the course of their service, whereas the constables in CBI do not do driving only. They attend to various duties and jobs as detailed above (Annexure R-1). It is further stated that the line of promotion of constables in CBI is constable/head constable/ASI/SI/Inspector etc. Constables in CBI (including those entrusted with the driving duties) are eligible to hold the posts of Head Constables and ASI etc. In due course of time of their promotion is made against promotion quota. Even on promotion, in the event of need they may be assigned the driving duties. At present one ASI and 16 Head Constables, who are having valid driving licence, are entrusted with the driving work. In view of this, it is prayed by the respondents that the applicants are not entitled to any reliefs.

6. We have heard the learned counsel for the parties at length and have gone through the records of the case.

7. The learned counsel for the applicant has placed reliance in the case of Randhir Singh Vs. U.O.I. reported in 1982(1) SLR p.256. The reported case relates to constable driver in the Delhi Police Force. They claimed their pay equivalent to the pay scales of RPF. It was contended in that case by the petitioner that he discharges the same duties as the drivers in RPF and in other offices and in fact he claims that he discharges more dangerous duties than others. The petitioner of the case complained that there is no

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reason whatsoever to discriminate against the petitioner and other driver-constables because he and his ilk happens to be described as constables as indeed they are bound to be so described belonging as they do to the Police Force. The case of Delhi Police was considered by Third Pay Commission also. The Hon'ble Supreme Court allowed the claim of the applicant holding that "there cannot be slightest doubt that the drivers in the Delhi Police Force performed the same functions and duties as other drivers in service of the Delhi Administration and the Central Government."

"We therefore allow the writ petition and direct the respondents to fix the scale of pay of the petitioner and the constable drivers of the Delhi Police Force at least on a par with that of the drivers of the Railway Protection Force".

8. We have given a carefully consideration to the observation of their Lordship in the present case. The principle followed in Randhir Singh's case was followed in Ram Chander Vs. Union of India (AIR 1984 SC 541) and P. Savita Vs. U.O.I. (AIR 1985 SC p.1124). In Ram Chander's case, there was arbitrary differential treatment in the pay scales accorded to some professors was struck down. The petitioners therein were holding the posts of professors in Indian Veterinary Research Institute (IVRI) under the Indian Council of Medical Research. The pay scale of professors under-went revision. The new recruits negotiatd the benefits of revision of scales but not the petitioner. He was allowed to continue in the old scale. He challenged that discrimination in the Supreme Court as being violative of the right to have 'equal pay for equal work', the Hon'ble Supreme Court accepted the contention.

In P. Savita's case, the artificial division of senior draftsman in the Ministry of Defence with unequal scales of pay for the same work was struck down. Then in 1986 in Dharmender Chamoli Vs. State of U.P. 1986(1) SCC p.637) the Hon'ble Supreme Court found fault with the Central Government for not giving, the casual workers, engaged in Nehru Yuvak Kendra, the same salary and conditions of service as enjoined by Class IV employees regularly employed against sanctioned posts. In the same year, in Surender Singh Vs. Engineer-in-chief (AIR 1986 SC p.584) the case of daily wage workers employed for several years by CPWD came up for consideration before the Court. They demanded parity in their wages, salary and allowances with those of regular and permanent employees of the Department on the basis of performing similar work and the relief was granted to them. The right to have equal pay for equal work was also accepted by Hon'ble Supreme Court in the following noted cases:

R.D. Gupta V. Ltd. Governor, Delhi (1987) 4 SCC 505: (AIR 1987 SC 2049); National Museum Non-Gazetted Employees Association v. U.O.I. (WP No.1230 of 1987 disposed of dt.10-2-1988) (reported in 1988 (1) Lab LN 954); Jaipal v. State of Haryana (W.P.No.455 and connected petitions of 1987 of DD 2-6-1988 (reported in AIR 1988 SC 1504) and Y.K. Mehta v. UOI (W.P. No.1239 of 1979 and connected petitions DD 26-8-1988) (reported in AIR 1988 SC 1970)."

9. In the counter affidavit filed in Randhir Singh's case, it was not explained how the case of drivers Delhi in the Police Force is different from that of drivers in other departments and what special factors weighed in fixing lower scale of pay for them. The Hon'ble Supreme Court further observed "we concede that equations of posts and equations of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for courts but we must hasten

to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matters of their pay merely because they belong to different departments. Of course, if officers of the same rank perform the similar functions and the duties and responsibilities of the posts held by them such officers may not be heard to complain of discriminatory pay merely because the posts are of the same rank and the nomenclature is the same. (emphasis supplied).

In the year 1988 in Federation of All India Customs & Central Excise Stenographers Vs. U.O.I. AIR 1988 SC p.1291. The Hon'ble Supreme Court observed as follows:

" There may be qualitative difference 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, reasonably 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."

And said (at p.1300 of AIR):

"The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less - it varies from nature and culture of employment. The problem about equal pay canot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact."

10. In State of U.P. Vs. J.P. Chaurasia AIR 1989 SC p.19 raised the simple question whether it is permissible to have two pay scales in the same cadre for persons having same duties and having same responsibilities. The Hon'ble High Court answered the question in negative holding that it would be violative of Constitutional Rights of 'equal pay for equal work'. The Hon'ble Supreme Court quashed the finding of the Hon'ble High Court and observed in para 17", primarily it requires among others evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in the affidavits of the interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalent unless it shows that it was made with extraneous considerations."

11. Again in AIR 1989 SC page 29 Umesh Chand Gupta & Others Vs. Oil & Natural Gas & Others, the Hon'ble Supreme Court considered the case of the employees of ONGC, the employees of ONGD contended that there is practically no difference in the nature of duties and responsibilities of technicians grade II and grade III, and therefore they are entitled to be treated and paid as technicians grade II. The Hon'ble Supreme Court observed the nature of work and responsibilities of

the posts are matters to be evaluated by the management and not for the Court to determine by relying upon averments in the affidavits of interested parties. The contention of the applicants was not accepted. In Mewa Ram Kanojia Vs. AIIMS (AIR 1989 SC p.1256) also the principle of 'equal pay for equal work' was not applied.

12. On the basis of the above law laid down by the Hon'ble Supreme Court, we find that the applicant has not given any sound basis for being equated with the constables drivers of the Delhi Police. Firstly, the Recruitment Rules of the Constable Drivers in two services, their respective qualifications had not been filed. Secondly, in Delhi Police, there is a direct recruitment of Constable Drivers while in CBI same are taken from various central or state organisations and they are given option either to retain in their own pay scale or to accept the deputation post on the pay scales prevalent in the organisation. Thirdly, the duty of Delhi Police consists of prevention of crime, maintenance of law and order and also covers wide range of other duties in odd times and at other occasions, Delhi being the capital country, while the duties and responsibilities are restricted in CBI and are only of investigation of crimes with a lesser work pressure and lesser number of vehicles to be plied with only for a particular purpose. The performance of duties are not so onerous as can be said to be in Delhi Police. Fourthly, the constables coming on deputation to CBI are given their promotion in regular line as Head Constable/ASI/SI etc. and the pay scales, therefore, of that grade is available to them. Lastly, when a person in CBI is taken on deputation, he is given the pay of the post from which he has joined plus the deputation allowance or the scale of pay extant in CBI and if the scale of constable driver is enhanced and made equivalent to Delhi Police then the scale of higher ranks have also to be equitably enhanced to fit in with the

it. prevalent scales in CBI otherwise would be discriminatory, considering hierarchy of the different cadres in CBI.

13. The principle of 'equal pay for equal work' has been applied by the Hon'ble Supreme Court in a number of cases* and at the same time this principle was not applied in the other cases.**

14. The study of the above cases will show that where two classes of employees performed identical and similar functions with the same measure of responsibility having same academic qualifications, they would be entitled to equal pay. However, the Court before this, consider and analyse the rational behind the State action in prescribing two different scales of pay. If on analysis of the relevant Rules and orders, nature of the duties, functions, measure of responsibilities, educational qualification required for the relevant post, the Court finds that the classification made by the State in giving the different treatment to the two classes of employees is founded on rational basis having nexus with the object sought to be achieved, the classification must be upheld. The principle of 'equal pay for equal work' cannot be applied to unequal; one has to demonstrate for application of this principle individual discrimination, in prescribing two different scales of pay for two classes of employees without reasonable classification

* Randhir Singh case AIR 1982 SC 879 ; Dharmendra Chamoli 1986(1) SCC 637 ; Surender Singh AIR 1986 SC 584 ; Bhagwan Das AIR 1987 SC 2049; Jaipal Singh AIR 1988 SC 1504 P. Savita AIR 1985 SC 1124.

** All India Customs Excise Stenographers Association Vs. U.O.I. AIR 1988 SC 1291; State of U.P. Vs. J.P. Chaurasia AIR 1989 SC 17; Umesh Chand Gupta Vs. O.N.G.C. & Ors. AIR 1989 SC 29; Mewa Ram Kanojia Vs. AIIMS AIR 1989 SC 1256; P. Markandya Vs. State of A.P. AIR 1989 SC 1308; State of A.P. Vs. G. Srinivasan Rao (1989) JT 615 SC; T.L. Gautam Vs. S.B. Patiala AIR 1989 SC 30

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for the same. Where unequal pay has brought about discrimination within the meaning of Article 14, it will be a case of 'equal pay for equal work' as envisaged in Article 14 of the Constitution. If the classification is proper and reasonable and regarding the objectives sought to be achieved, the doctrine of equal pay for equal work will not have any application, even though the person doing the same work, are not getting the same pay.

15. Taking all these facts into consideration and the law cited before us, we do not find that in the present case there is equation of posts between the constable-driver of the Delhi Police with that of CBI Constable (Applicant) particularly in view of the fact that the duty of the constables in CBI has been clearly defined and those knowing driving made to work as driver, but they are not restricted to that work, and other work may be taken from them, as there is not such amount of work to be done in the investigation by CBI where by most constables having driving licence plying of vehicles may not be at all required. In any case, we do not find any equivalence of posts and only for namesake if both are designated driver constable, cannot be made to get the same salary under different organisation though the employer may be the same, Union of India. We find therefore no force in this application and the same is dismissed, leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 23.11.90
MEMBER (J)

C. C. Jain
23.11.90
(P.C. JAIN)
MEMBER (A)