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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1333/89
XAXN

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DATE OF DECISION 10.1.1992.

Shri D.N. Sharma & Ors Applicant (s)

Shri G.D. Bhandari, Advocate for the Applicant (s)

versus
Union of India & Ors. Respondent (s)

Mrs. Raj Kumari Chopra, Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. I.K. Rasgotra, Member (A)

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

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

J. P. Sharma
(J.P. Sharma)
Member (J)

I. K. Rasgotra
(I.K. Rasgotra)
Member (A)

10.1.1992.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
OA NO.1333/89 DATE OF DECISION:10.1.1992.

SHRI D.N. SHARMA & ORS. ...APPLICANTS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

CORAM:

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANTS SHRI G.D. BHANDARI, COUNSEL

FOR THE RESPONDENTS MRS. RAJ KUMARI CHOPRA,
COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri D.N. Sharma and 8 others working as Mechanic-cum-Carpenter (MCC) in the Exhibition Division in the Directorate of Advertising & Visual Publicity (DAVP) have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the allotment of lower scale of pay of Rs.1150-1500 to them while their counterparts in the Doordarshan and All India Radio (AIR) and various other departments who have been allotted the higher scale of pay of Rs.1400-2300 in violation of the 'principle of equal pay for equal work.'

2. The brief facts of the case are that the applicants were initially appointed in the grade of Rs.320-400 which has been now replaced by the scale of Rs.1150-1500 in accordance with the recommendations of the Fourth Central Pay Commission. They contend that the Carpenters employed in other Media Units viz. Doordarshan and AIR have been given the replacement scale of Rs.1200-1800, while the same category in the

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Central Health Education Bureau (CHEB) under the Ministry of Health and Family Welfare has been granted the pay scale of Rs.1400-2300. This according to them constitutes hostile discrimination as they believe that they are shouldering similar duties and responsibilities, as the Carpenters in Doordarshan and AIR and in the Ministry of Health and Family Welfare. They further submit that the Carpenters in the CHEB possess lower qualifications than those prescribed for them in the DAVP as is evident from the Recruitment Rules filed at Annexure A-3. Even the Junior Technical Assistant (JTA) in the Fabrication and Exhibition Division have been given the scale of Rs.1400-2300 although the qualifications prescribed for JTA are inferior to the qualifications prescribed for the MCC (Annexure A-6). They have filed a statement giving comparative qualifications prescribed in the relevant Recruitment Rules for the Carpenters in Doordarshan, AIR, CHEB and the MCCs in the DAVP in support of their contention.

By way of relief they have prayed that the respondents be directed to grant the scale of Rs.1400-2300 to the MCC w.e.f. the date of implementation of the recommendation of the Fourth Central Pay Commission viz. 1.1.1986 with all consequential benefits, applying the principle of equal pay for equal work. In support of their case they have cited the decisions of the Hon'ble Supreme Court in **Dhirender Chamoli & Anr. v. State of UP 1986 (1) SCC 637** and **State of UP & Ors. v. J.P. Chaurasia & Ors. 1989 (1) ATLT SC 214.**

3. The respondents in their counter-affidavit submit that the MCCs enter service in the scale of Rs.1150-1500 in DAVP. Shri Joginder Paul, applicant No.9 is a permanent MCC but is holding the post of

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Projectionist in the scale of Rs.1350-2200 on adhoc basis. There is no post of MCC in any other department of the Ministry of Information and Broadcasting viz. Doordarshan, AIR etc. and as such the comparison drawn by the applicants is misplaced. The respondents urge that the scale of pay of Rs.1150-1500 has been allotted to the applicants after due consideration of the recruitment qualification and also keeping in view the duties and responsibilities attached to the post. The applicants had made a representation in June, 1988, requesting revision of scale of pay when the matter was re-examined after collecting information from other departments. It was observed that no other department has the post of MCC and, therefore, no comparison was possible with any post in other departments. Further, the pre-revised scale of pay of the applicants was Rs.320-400 and the same has rightly been replaced by Rs.1150-1500. The Carpenters in Doordarshan and AIR on the other hand perform specialised nature of jobs and were placed in the pre-revised scale of Rs.330-480 which has been correctly replaced by the scale of Rs.1200- 1800. Thus there is no anomaly involved. The further submit that the MCC have 100% promotion to the post of Junior Technical Assistant (Exhibits) in the scale of Rs.1400-2300. The MCCs who possess the qualifications required for the Projectionists are also considered for promotion to the 25% of the vacancies in the pay scale of Rs.1350-2200. The MCCs with 5 years regular service in the grade constitute a feeder category for promotion to the post of Projectionists as per the recruitment Rules. They further submit that cases regarding comparision of duties and responsibilities and allotment of scale of pay cannot be decided in

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isolation in a judicial forum and should be best left to the Pay Commissions.

4. The applicant have filed a rejoinder, reiterating their case for allotment of pay scale of Rs.1400-2300 on the principle of 'equal pay for equal work.'

Shri G.D. Bhandari, learned counsel supplemented the case of the applicants for their placement in a higher scale of pay in accordance with the principle of 'equal pay for equal work' by referring us to various judicial pronouncements of the Apex Court in regard to 'equal pay for equal work.'

5. The learned counsel for the respondents, Mrs. Raj Kumari Chopra contended that none of the citations cited by the learned counsel for the applicants were germane to the issues of law and fact raised in this O.A. The learned counsel submitted that the most relevant judicial pronouncement in this case is the decision of the Tribunal in **TA 798/86 (CW 2169/86) Homeopathic Doctors Association v. Union of India & Ors.**

6. We have considered the submissions of the learned counsel for both the parties and perused the records carefully. In the case of **Mev Ram Kanojia v. AIIMS & Ors. JT 1989 (1) SC 512** their Lordships in the Hon'ble Supreme Court Observed:-

"7. Even assuming that the petitioner performs similar duties and functions as those performed by an Audiologist, it is not sufficient to uphold his claim for equal pay. As already observed, in judging the equality of work for the purposes of equal pay, regard must be had not only to the duties and functions but also

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to the educational qualifications, qualitative difference and the measures of responsibility prescribed for the respective posts. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of 'Equal Pay for Equal Work' would not apply..."

Again in the case of **State of UP & Ors. v. J.P. Chaurasia & Ors.** AIR 1989 SC 19 the question came whether two posts are equal and should carry equal pay, their Lordships observed:-

"The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. 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 affidavits of 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.

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The Court should not try to tinker with such equivalent unless it is shown that it was made with extraneous consideration."

The question of parity in pay scale again came up for consideration of the Hon'ble Supreme Court in the case of **K. Vasudevan Nair & Ors. v. U.O.I. & Ors. 1990 (3) SLJ 125** when the Section Officers working in the Indian Audit and Accounts Department claimed the same pay scale as were being drawn by the Section Officers in the Central Secretariat where their Lordships observed:-

"13. The Appellants-petitioners have, however, strenuously argued before us that the Comptroller and Auditor General of India stated before the Third Pay Commission that the duties of Section Officers in the Audit and Accounts Department are similar to those performed by the Section Officers in the Central Secretariat. Apart from that our attention was invited to the averments in the writ petition where comparison of duties of Section Officers of Central Secretariat and Section Officers of Audit and Accounts Department have been detailed. The respondents in their counter affidavit have denied the averments and have asserted that the duties performed by the two sets of Section Officers are different. It is not possible for us to determine the question on the basis of the assertions made in the writ petition and the counter filed by the respondents. The pay revision by the Government was based on the recommendations of the Third Pay Commission which was an expert body. The extent of material and expertise before the Pay

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Commission is obvious from Para 22 Part I of the report which is as under.

'We devoted 98 days for taking oral evidence of service associations, 69 days for discussions with officials (including representatives of State Government) and 31 days for taking evidence from non-official witnesses. We held internal meetings on 235 days to discuss various issues and finalise our recommendations.'

14. The Pay Commission took into consideration the statement of Comptroller and Auditor-General of India and all other material placed before it by the petitioners/appellants. We, therefore, see no force in this contention and reject the same."

It is, therefore, obvious that equation or parity between the two posts is an executive function. It is for the expert bodies like Pay Commission to go into these matters. The Pay Commissions not only take the views of the employees into consideration but also go into voluminous information made available to them by the expert bodies, trade unions, experts in the field of personnel and industrial relations etc. It is not for the Tribunal to go into these matters. It is also not disputed that the pay scale of the applicants allotted to them by the Third Pay Commission was Rs.320-400 which has been replaced by the scale of pay of Rs.1150-1500 whereas the pay scale of the Carpenters in the AIR and Doordarshan was Rs.330-480 now replaced by Rs.1200-1800. Obviously, the Fourth Central Pay Commission after their assessment did not consider it justifiable to place the applicants on the same footing as the Carpenters

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in Doordarshan and AIR. Accordingly they were allotted the normal replacement scale recommended for them by the Pay Commission. It is nobody's case that the Fourth Central Pay Commission has introduced any anomaly.

In the facts and circumstances of the case we are not inclined to interfere in the matter. Accordingly, the O.A. is dismissed, with no order as to costs.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)

I. K. Rasgotra

(I.K. RASGOTRA)
MEMBER (J)

January 10, 1992.