

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 428/89
T.A. No.

199

DATE OF DECISION 24.4.1991.

Shri D.B. Chatterjee & Ors. Petitioners
Shri T.C. Aggarwal, Advocate for the Petitioner(s)
Versus
Union of India Respondent
Shri P.H. Ramchandani, Senior Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Signature)
(AMITAV BANERJI)
CHAIRMAN
24.4.91.

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SHRI D.B. CHATTERJEE & ORS.

APPLICANTS

VERSUS

UNION OF INDIA

RESPONDENTS

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THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

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

FOR THE APPLICANTS

SHRI T.C. AGGARWAL, COUNSEL


FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI,
SENIOR COUNSEL

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

Shri D.B. Chatterjee and 31 others as per details at Annexure A-1 have filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the action of the respondents in denying them the payment of salary etc. in accordance with the principle of 'equal pay for equal work' thereby offending the provisions made in Article 39 (d) of the Constitution of India.

The case of the applicants is that they are holding the civil posts of Graphic Artist in Doordarshan which is an attached office of the Ministry of Information and Broadcasting. They were employed in the pay scale of Rs.425-750 (pre-revised) and had approximately rendered 15 years' service when the application was filed in February, 1989. They were selected for appointment through All India Competition after the respondents had advertised the posts. The essential and desirable



qualifications prescribed for the posts are:-

"Essential:

- i) Diploma in Fine/Commerical Art from a recognised Institute.
- 2) Two years experience of preparation of visuals and lettering in a Government Institute or a Commercial Organisation.
- 3) Should have passed Matriculation or Equivalent Examination with language relevant to the vacancy as a medium of instructions.

Desirabale:

Knowledge of more than one Indian language of the standard mentioned against."

The applicants submit that they have been discriminated, as they have not been allowed the pay scale at par with the Artists in Publications Division and in the Film and Television Institute of India which too are attached offices of the Ministry of Information and Broadcasting. Their grievance is further aggravated by the fact that respondent No.1 has by combining the Artists of the Publications Division with the allied posts in the Directorate of Advertising and Visual Publicity (DAVP) has further improved the avenues of promotion of the Artists in these organisations. They further submit ^{that} for Artists and Layout Artists in the Publications Division which are comparable posts the pre-revised pay scale allotted is Rs.650-1200 while their scale of pay is Rs.425-750 (pre-revised). The qualifications prescribed for the post of the Artists in Publications Division etc. are as under:-

"Essential:

- a) Degree or Diploma in Fine Art or Commercial Art of recognised University/Institution or equivalent.
- b) 2 years experience of Commercial Art in an

advertising agency or a firm of standing or
a Government Organisation.

or

3 years experience in Layout Worker in colour,
black and white including preparation of illustrations designs etc. for magazines, pamphlets, folders etc.

Note:- Qualifications are relaxable.....

Desirable:

Knowledge of Hindi."

2. The applicants contend that the post of Graphic Artists in Doordarshan carries much higher responsibilities and duties as compared to that of Artists and Layout Artists in Publications Division and DAVP. In both cases the basic duty requires depicting of the situation by graph, photo illustration which should underscore the background theme by visuals. In case of Publications Division this work is done on books and magazines whereas in the case of Doordarshan all programmes start with graphic illustration and end with graphic illustration. The applicants further submit that the respondents have failed to revise their pay scales suitably in accordance with the recommendations of the Fourth Central Pay Commission, nor have they been provided any avenues of promotion. The only scope of promotion which the Graphic Artists have is to the post of Graphic Supervisor in the pay scale of Rs.650-1200 (pre-revised) which are limited in number. The applicants also allege that the respondents are making promotion to the posts of Graphic Supervisor arbitrarily and on the basis of the favouritism. Thus junior persons like S/Shri K.S. Natarajan and Abdul Hamid have been promoted, ignoring the claims of the seniors. According



to the Recruitment Rules, the promotion to the posts of Graphic Supervisor is said to be 100% on the basis of seniority subject to rejection of unfit. The applicants further claim that the Third Central Pay Commission had recommended time bound promotion and in their opinion it was necessary that a Government employee should get promotion at least after putting 15 years' service. Similar recommendations have also been made by the Fourth Central Pay Commission. In support of their case they have cited the Hon'ble Supreme Court's decision in the case of Y.K. Mehta & Ors. v. UOI & Anr. AIR 1988 SC 1970. It is further submitted that based on the recommendations of the Third Pay Commission the Department of Personnel & Training issued further instructions vide O.M. No.5/45/77-PP dated 1st September, 1977, directing the Ministries/Departments to identify pockets where promotion could not be given even after 15 years of service. The respondents, however, failed to do so. The applicants further justify the need to provide adequate avenues of promotion on the basis of Hon'ble Supreme Court's decision in the case of Raghunath Prasad Singh v. Secy., Home (Police) Department, Govt. of Bihar & Ors. AIR 1988 SC 1033.

By way of relief the applicants have prayed that the respondents be directed to revise the pay scale of the applicants from Rs.425-750 (pre-revised) to Rs.650-1200 (pre-revised), as admissible to Artists of Publications Division and further as revised by the Fourth Central Pay Commission with consequential avenues of promotion on the same lines.

3. The respondents have denied the charges of discrimination, arbitrary and illegal action against the

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applicants and submit that they have been paid pay/fee in accordance with scales as prescribed by the Government from time to time and accepted by the applicants by way of mutual agreement signed with the Government at the time of initial appointment. It is also pointed out that all the applicants are not Graphic Artists. Smt. Tapti Bagchi and Shri K.S. Natarajan are already drawing fee/pay in the scale of Rs.650-1200 (pre-revised). The details of the applicants given in Annexure A-1 also reveal that all the applicants have not rendered more than 15 years of service. Applicants at Srl. Nos. 3, 6, 8, 19, 31 and 32 have completed only seven months to 4½ years, as their dates of appointment are between July, 1985 to September, 1988; nor have all the applicants been appointed through All India Competition on advertisement by selection method fulfilling the qualifications. They are:-

- a) Mrs. Manju Bist
- b) Mrs. Sunita Rani
- c) Shri Resham Lal
- d) Shri Shariff Ahmad
- e) Shri A.V. Raghuprasad.

Their services have been regularised on the basis of government formula evolved for regularisation of casual Artists in Doordarshan in relaxation of normal procedure of recruitment in 1979-80. The respondents concede that the promotion for the Graphic Artists to the posts of Graphic Supervisor as per Recruitment Rules of 1979 is 100% by promotion. However, the revised Recruitment Rules in respect of Graphic Supervisor are still under consideration of the Government. They, however, contest the claim of the applicants that their



posts are equivalent or comparable to the posts of Artists in Publications Division and Film and Television Institute of India, have highlighted the difference between the posts of Layout Artists etc. of the Publications Division and Graphic Artists of Doordarshan as per details in Annexure A-1 (page 37 of the paperbook). In this connection they have cited the judgement of the Hon'ble Supreme Court in Umesh Chandra Gupta v. O.N.G.C. - 1989 (1) - LLJ - 74 - SC and the case of State of U.P. & Ors. v. J.P. Chaurasia & Ors. - 1989 (1) - SCC - 121. The respondents have further averred that the Doordarshan Publications Division, Film and Television Institute of India are different and independent departments and their staff is borne on different cadres and submit that comparison of the qualifications made by the applicants is superficial and illusory, as in Publications Division there are four categories of Layout Artists etc. with similar professional qualifications but having different pay scales depending upon the experience. The respondents have further drawn our attention to the specific recommendation of the Fourth Central Pay Commission vide paragraph 10.320 of Chapter 10 (XIV) which is reproduced below:-

"We note that the set up in Doordarshan is somewhat different from the films division. There may be reasons for the difference. We have recommended the pay scales for the posts in the films division. Keeping these scales in view, the Ministry may examine and prescribe the pay scale for comparable posts in Doordarshan. Till then, the posts in Doordarshan may be given the pay scales recommended in Chapter 8."

Thus, even the Fourth Central Pay Commission

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admitted that the set up in the Doordarshan is different from than that obtaining in the Film Division. Nevertheless, in pursuance of the above recommendation of the Commission, a Committee has been set up in Doordarshan to go into the matter of pay scales of the Staff Artists in Doordarshan who are comparable to their counterparts in the Film Division.

The respondents have affirmed that as soon as the report of the Committee is received, necessary further action will be taken with utmost urgency. The respondents deny that any favouritism has been in the case of S/Shri K.S. Natarajan and Abdul Hamid for their promotion to the post of Graphic Supervisor from Graphic Artists. These promotions were made in June, 1977 prior to the framing of the Recruitment Rules of the Staff Artists, 1979 and in accordance with Recruitment Rules of Staff Artists prevailing in All India Radio which were then applicable to Doordarshan. There is no doubt that some posts of Graphic Supervisor are lying vacant but that is due to the fact that the Recruitment Rules for the said posts are under revision. The respondents also have submitted that subsequent to the case of Y.K. Mehta & Ors. (supra) relied upon by the applicants the Hon'ble Supreme Court has held in the case of Umesh Chandra v. O.N.G.C. (supra) and State of U.P. v. J.P. Chaurasia (supra) that it is for the Government to decide the pay scales for the various posts in various departments, keeping in view all the relevant factors viz. organisation, structure duties, qualifications, quality and quantity of work etc.

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4. In their rejoinder the applicants generally reiterate their submissions and maintain that the posts in Doordarshan which is an audio visual media carries much higher responsibilities than the Artists etc. in the Publications Division, DAVP etc. They have further sought to fortify their case by citing the case of Randhir Singh v. UOI 1982 (1) SLJ 490 where the Hon'ble Supreme Court had granted the same scale of pay to the matriculate and non-matriculate drivers of the Delhi Police Force although they were allotted different scales of pay based on the qualifications.

5. Shri T.C. Aggarwal, the learned counsel for the applicants traversed more or less the same grounds as referred to in the case of the applicants and referred us to the cases which are examined below in support of the case of the applicants.

i) JT-1988 (3) SC 466 Y.K. Mehta & Ors. v. UOI & Anr. decided on 26.8.1988.

The petitioners in this case belong to three specific categories namely Cameraman Grade-II, Sound Recordist and Lighting Assistant/Lightman. They claimed that they should be given the same scales of pay, as given to the corresponding categories in the Film Division. The judgement, dealt with these three specific categories where there were minor variations in the nomenclature/designations of the posts. Thus, ignoring the variations in the designations like Recordist or Sound Recordist, their Lordships in the Supreme Court came to the conclusion that the applicants in these categories should be granted the same scale of pay which was applicable to the corresponding categories in the Film Division w.e.f. first day of the month of the year in which the said writ petition was filed. The decision has essentially to be read in the facts of the case. No ratio

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of universal application is available which may help the applicants.

ii) 1988 (1) SLJ SC 43 UOI v. M.A. Chowdhary

This case is not very germane to the issue before us, as it confirms only the accepted position that the Staff Artists in All India Radio are holders of civil posts. In fact this aspect has also been covered in the case of Y.K. Mehta & Ors. (supra).

iii) 1990 (1) SLJ CAT 23 Paritosh Kanti Bal v. UOI & Ors

The applicant herein was denied equal pay while holding identical post, as there was ban on creation/up-gradation of the posts. The case is, therefore, not germane to the matter before us.

iv) 1989 (10) ATC 504 CAT Chandigarh General Secy., All India Defence Lands & Cantonments Service Staff Association, Satwari, v. Secy., Govt. of India, New Delhi & Anr.

The question in this case was whether the Superintendent B/R Grade I in Military Engineering Service and Superintendent B/R Grade I in the Defence Lands and Cantonments service should be placed at par in the matter of pay scale. The relevant ratio which emerges from the case is that the two posts for applying the principle of 'equal pay for equal work' need not be "identical nature" in absolute terms. What is required to be recognised for the purpose of parity in pay scale is that duties and responsibilities of the different posts are comparable and are equally onerous. The case projected before us is that duties and responsibilities of the applicants are more onerous than the duties and responsibilities of Layout Artists etc. in the Publications Division.

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v) AIR-1988-SC-1033-Raghunath-Prasad-Singh-v.-Secy.,
Home-(Police)-Department,-Govt.-of-Bihar-&-Ors.

Their Lordships in the Supreme Court observed that "Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly."

We observe that it is no one's case that the avenues of promotion should not be available to the applicants. In fact the respondents have pointed out that the applicants do have promotional avenues.

6. The respondents on the other hand have placed their reliance on the case of State-of-UP-&-Ors. (supra) decided on September 27, 1988. Their Lordships in the Supreme Court have observed that:-

"18. The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. 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

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expert bodies like Pay Commission. They would be the best judge to evaluate the nature 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 equivalence unless it is shown that it was made with extraneous consideration."

The second case relied upon by the respondents is that of Umesh Chandra v. O.N.G.C. (supra) decided on 7.10.1988. The Hon'ble Supreme Court in this case has also taken the same view, as in the case of State of U.P. vs. J.P. Chaurasia (supra).

7. We have heard the learned counsel of both the parties considered the judicial dicta cited by both the parties, and gone through the record very carefully. The Third Pay Commission nowhere recommended that a Government employee should get promotion at least after 15 years of service, as contended by the applicants. The Pay Commission, however, vide paragraph-46/ page 82 of its report observed:-

"It is, however, clear that in general, the present structure is such that it can usefully permit one promotion, and in many cases a second promotion also, but towards the end of one's career....."

"We are of the opinion that the existing promotion prospects of Class IV as well as Class II cadres need further improvement and accordingly recommend as follows:-"

Thereafter the Commission recommended various measures e.g. training to Class IV staff, study leave to improve educational and technical qualifications providing prosecute subsidy to/requisite training coursed after office hours in

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Industrial Training Institutes or other recognised institutes and upgradation of certain identified posts for promotion from class IV to class II. At the same time, the Pay Commission stated that:-

"49. It would perhaps only be appropriate that at this stage we should clarify a few points to permit the Government to assess the background against which we have made the foregoing recommendations for improving promotion prospects generally. We are convinced that additional posts should be justified on the basis of needs and requirements and should not be created as an easy way of improving promotion prospects, and of relieving stagnation. It is not also our intention that standards of recruitment should be diluted merely to open up promotion avenues. In our view, no impairment in the efficiency of the public services should be countenanced." (emphasis supplied).

There is thus no recommendation making provision for a time bound promotion.

The Fourth Central Pay Commission submitted its Report in June, 1986 after studying indepth all the matters relating to the structure of emoluments, conditions of service of the Central Government employees. the Commission was presided over by Late Justice Shri P.N. Singhal (retired Judge of the Supreme Court) and was supported by an eminent economist, an administrator and experts in public administration. Vide paragraph 10.320 (Chapter XIV Ministry of Information and Broadcasting) the Commission had specifically observed "that the set up in Doordarshan is somewhat different from the films division." While observing that there may be reasons for the difference the Commission recommended that the

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Ministry may examine and prescribe the pay scales for comparable posts in Doordarshan keeping in view the scales of pay recommended for posts in Film Division. The respondents have affirmed that in pursuance of the said recommendations the Government have already set up a Committee which is going into the matter and that the Committee's recommendations would be considered for implementation as soon as the report is received. The observation of their Lordships in the Supreme Court in the case of J.P. Chaurasia (supra) in the matter of equation of posts and allotment of pay scales are of great import in this perspective. Their Lordships felt that the equation of posts or equation of pay must be left to the Executive Government. "It must be determined by the Expert Bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of the posts."

It will be pertinent to refer to the judgement of the Hon'ble Supreme Court in the case of K. Vasudevan Nair & Ors. etc. etc. v. UOI & Ors. JT-1990-(3) SC 58. The petitioners who are Section Officers in the Indian Audit and Accounts Department had prayed for the same scales of pay, as drawn by the Section Officers in the Central Secretariat in the above case. Their Lordships in their judgement delivered on 19.9.1990 observing that this matter had been examined by the Third Pay Commission set up by the Central Government which was presided over by a former judge of this court directed:-

"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 Commission is obvious from Para 22 Part 1 of the report which is as

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under:

"We devoted 98 days for taking oral evidence of service associations, 69 days for discussions with officials (including representatives of State Governments) 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."

17. 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."


The position in regard to the Fourth Central Pay Commission is no different. As earlier said the Fourth Central Pay Commission was an expert body presided over by a retired judge of the Supreme Court and was assisted by experts. The Commission has made a specific recommendation and the respondents Government have already appointed a Committee to go into the matter of pay scales of the applicants in pursuance thereof. We are, therefore, of the view that the applicants should await the outcome of the deliberations of the Committee and the Government's decision thereon. The report of the Fourth Central Pay Commission was accepted by the Government vide notification dated 13th March, 1987. The expert committee appointed to go into the pay scales of the staff of the Doordarshan must have been in existence for over one year now. We expect that the committee shall finish its deliberations and submit its report with greatest expedition, keeping in view the time period, which has elapsed since the implementation of the Commission's

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recommendations in case of all other employees of the Government. While we issue no direction in regard to the equation of pay or equation of posts as prayed for by the applicants, we hope and trust that the committee will complete its deliberations and submit its report as early as possible and that the respondents shall consider the report and take decisions on the recommendations of the committee with utmost expedition but not later than six months from the date of communication of this order.

The application is disposed of as above, with no order as to costs.


(I.K. RASGOTRA)
MEMBER (A)


(AMITAV BANERJI)
CHAIRMAN

'SKK'