

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 471/1989.

DATE OF DECISION: July 24, 1989.

S.K. Chattopadhyay	Applicant.
	V/s.	
Union of India & Others	Respondents.
For the Applicant	Shri P.P. Rao, Sr. Advocate with Shri R.L. Sethi, Advocate
For the Respondents	Shri P.H. Ramchandani, Sr. Counsel for U.O.I. Shri G.D. Gupta, Counsel for Respondent No.4.

CORAM: Hon'ble Mr. P.K. Kartha, Vice Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

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 *No* copy of the judgement?
4. Whether to be circulated to other Benches? *No*

Leave 24/7/89
(P.C. JAIN)
MEMBER (A)

Arrd 24/7/89
(P.K. KARTHA)
VICE CHAIRMAN

6

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

(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant who was appointed as Director (Sugar Technical) in the Directorate of Sugar, New Delhi on contract basis in the scale of Rs.1500-60-1800 and which was subsequently revised to Rs.3700-5000 and whose contractual employment is expiring on 24.7.1989, has prayed that the respondents (No.1 to 3) be directed to treat him as a permanent incumbent on the above post with effect from 25.7.1986 and be entitled to a salary of Rs.5,000/- i.e., the highest stage of the revised scale. As an interim measure, he prayed that he may be allowed to continue in service and there should be a stay of the operation of the clause of termination of his service illegally inserted in the contract.

2. The facts of the case, in brief, are as under: -

Prior to his appointment as Director (Sugar Technical) in the Directorate of Sugar, Department of

Food, Ministry of Food & Civil Supplies, New Delhi, the applicant was working as Chief Manager (Technical) in the Custodian General's Organisation For Notified Sugar Undertakings from 1.3.1984 in the scale of Rs.2000-125-2500 on a purely temporary and ad-hoc post. In response to a circular letter dated the 14th October, 1985 to the Chief Secretaries of all States and Union Territories and some others (Annexure R.I to the counter-affidavit of Respondents 1 to 3), the applicant applied for the post of Director (Sugar Technical) and his application was duly forwarded by the Custodian General's Organisation For Notified Sugar Undertakings on 13.11.1985 (Annexure R-II to the counter-affidavit supra). After personal talk held by the Union Public Service Commission on 16.4.1986 in which the applicant also appeared, the applicant was offered appointment to the above post in pursuance of the recommendations of the UPSC to that effect. The applicant joined the post of Director (ST) on 25.7.1986 and as per the terms and conditions of the offer of appointment, executed a contract with the Union of India on 31.7.1986 (Annexure R-V to the counter-affidavit supra). The contract was valid for a period of one year. The appointment was notified in the Gazette on 5.8.1986 (Annexure V to the application). On 18.9.1987 a Gazette Corrigendum was published by which the term of employment was extended to three years i.e., from 25.7.1986 to 24.7.1989. Consequent on the revision of the pay scale to Rs.3700 - 5000 in pursuance of the recommendations of the Fourth Central Pay Commission, another contract was signed on 8.4.1988.

3. One Shri R.P. Singhal, Deputy Director (Sugar Technical) moved a Miscellaneous Petition No.767 of 1989 on 7.4.1989 for being impleaded as a respondent in this application, which was allowed ^{and Cc.} the petitioner was impleaded as Respondent No.4 by the Tribunal's order dated 10.4.1989.

4. The case of the applicant is that although he applied for the post of Director (Sugar Technical) for appointment by transfer on deputation (including short term contract) as on the date of his application, he was an employee of the Custodian General's Organisation For Notified Sugar Undertakings, his appointment should be deemed to have been made as a direct recruit as on the date of interview by the UPSC, he had ceased to be an employee of that Organisation. He contends that he cannot be treated to have been appointed by transfer on deputation as either on the date of interview or on the date of appointment to the post of Director (Sugar Technical), he was not holding any post under the Government of India or State Government or Union Territory or in an Autonomous Organisation as mentioned in the Recruitment Rules. He has also taken the plea that under the Recruitment Rules for the post of Director (Sugar Technical), a person appointed on short term contract has also to come on transfer from the eligible organisations and in his case no such transfer is involved and as such he could not have been appointed on a short term contract. He has further contended that the contract executed by him on 31.7.1986 was under compulsion as he was without a job at that time and that he was coerced to sign the second contract on 8.4.1988; his bargaining power being unequal to the power of his employer. Accordingly, in his application, he had taken the plea that the contract is voidable; but in his rejoinder affidavit to the counter-affidavit of Respondents 1 to 3, he has taken the plea that his contract is void, illegal being contrary to recruitment rules and hence not binding upon the applicant who was admittedly not a deputationist.

5. The second prayer is about refixation of his pay in the revised scale of Rs.3700 - 5000. On this point,

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his case is that in the scale of Rs.1500-60-1800, his pay was fixed at Rs.1800 which was the maximum of the scale and as such in the revised scale of Rs.3700 - 5000, which is a replacement scale for the scale of Rs.1500-60-1800, his pay should have been fixed at Rs.5,000 and he is entitled to arrears of pay and allowances on this basis with effect from the date of his appointment.

6. First taking the case of Respondent No.4, it may be stated that apart from agreeing with the counter-affidavit of Respondent No.1 to 3 in regard to the nature of appointment, he has also stated that he has a vested interest in the post of Director (Sugar Technical) at present held by the applicant and which is due to fall vacant with effect from 25.7.1989, as according to the roster of vacancies, he would be eligible to hold that post. It may be stated at the outset that in this application, we do not propose to adjudicate on the eligibility or otherwise of Respondent No.4 for being considered for this post after it becomes vacant as this is not the issue in the application.

7. For deciding on the nature of appointment, we have to refer to the "Directorate of Sugar, Director (Sugar Technical) Recruitment Rules, 1981" (Annexure R-III to the counter-affidavit of Respondents 1 to 3) - hereafter for short, referred to as the 'Recruitment Rules'. It is pertinent to mention here that these Recruitment Rules have not been challenged by the applicant. A perusal of these Recruitment Rules shows that there are only two posts, both of which are Selection posts. 50 Per cent of the posts are to be filled by promotion, failing which by transfer on deputation (including short-term contract) and 50 per cent by transfer on deputation (including short-term contract) failing which by direct recruitment. Educational qualifications prescribed for direct recruits will
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also apply in the case of promotees. Educational and other qualifications required for direct recruits are mentioned in column 8 of the Schedule attached to the Recruitment Rules. These are reproduced below: -

" (i) Degree in Chemical Engineering / Technology or Degree in Science, with a post-graduate Diploma in Sugar Technology or Sugar Engineering from a recognised University or equivalent.

(ii) 10 years' experience in a responsible supervisory capacity under Government or in an organisation connected with sugar industry.

Note: 1. Qualifications are relaxable at the discretion of UPSC in cases of candidates otherwise well qualified.

Note: 2. The qualification(s) regarding experience is/are relaxable at the discretion of the UPSC in the case of candidates belonging to the Scheduled Castes and the Scheduled Tribes, if, at any stage of selection, the UPSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them. "

For 'promotion', Deputy Director (Sugar Technical) with 5 years service in the grade rendered after appointment thereto on a regular basis, is prescribed as a requirement in column 12 of the Schedule to the Recruitment Rules.

For 'Transfer on deputation (including short-term contract)', the following requirement is prescribed in column 12 of the Schedule to the Recruitment Rules: -

"Officers of the Central Government / State Governments, Universities and autonomous public undertakings / holding analogous posts or with 5 years' service in posts in the scale of Rs.1100 - 1600 and possessing the qualifications and experience prescribed for direct recruitment in column 8."

8. It will be seen from the above that the eligibility for transfer on deputation (including short-term contract)

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is different from the one prescribed for direct recruitment inasmuch as for transfer on deputation, not only the qualifications and experience prescribed for direct recruits as given in column 8 of the aforesaid Schedule are essential, but in addition the candidate should be in service of the Central Government / State Government / Universities and autonomous public undertakings. The process of selection for direct recruitment is also different inasmuch as in the case of the former, the advertisement is issued by the Union Public Service Commission while in the case of transfer on deputation (including short-term contract), there is no open advertisement. In this case also, a limited circular was issued inviting applications from eligible candidates and that too not by the UPSC. The file of the Ministry of Food & Civil Supplies, Department of Food, Office of Sugar Desk-I No.A-12026/3/85-Sugar D-I (Volume I) which deals with the filling up of the post under adjudication shows that only seven applications were received and these were scrutinised in terms of eligibility as per column 12 of the Schedule to the Recruitment Rules for the purpose of filling the post by transfer on deputation (including short-term contract), and not as if it was a case of direct recruitment.

9. It was argued at the bar that the circular (Annexure R-I to the counter-affidavit of Respondents 1 to 3) was also reproduced in the Employment News and this implied that failing selection by transfer on deputation (including short-term contract), the recruitment process was for direct recruitment. It was further argued on behalf of the applicant that as per the Recruitment Rules, the mode of direct recruitment is only a contingent provision and as such separate process of direct recruitment is not envisaged in the Recruitment Rules.

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10. We are unable to agree with these contentions. We have pointed out above that the qualifications etc. prescribed for direct recruits are different from those prescribed for filling the post by transfer on deputation (including short-term contract). While it is true that direct recruitment is a contingent provision, it cannot be accepted that the process of selection is one and no separate process for direct recruitment is required under the Recruitment Rules. The mere fact that the circular inviting applications for filling the post by transfer on deputation (including short-term contract) was also reproduced in the Employment News, does not mean that the requirement for selection by direct recruitment has been fulfilled. It was stated on behalf of Respondents 1 to 3 that as per the Office Memorandum dated 11.7.1985 of the Department of Personnel, the Departments are required to publicise in the Employment News even vacancies to be filled by transfer on deputation (including short-term contract). The Union Public Service Commission in their letter dated 21.4.1986 recommended the name of the applicant for appointment to the post of Director (Sugar Technical) on deputation for a period prescribed in the Recruitment Rules. The Department in their letter dated 24.4.1986 wrote to the UPSC that the applicant was no longer working in the Custodian General's Organisation for Notified Sugar Undertakings and accordingly sought advice of the UPSC if the applicant could be appointed against the post on contract basis as this mode was also provided in the Recruitment Rules. The UPSC, in their letter dated 13.5.1986, advised that in the circumstances explained by the Department in their letter dated 24.4.1986, the Commission agrees to the appointment of the applicant on a short-term contract basis. After receipt of this advice from the UPSC, Memorandum dated 25.7.1986 (Annexure R-IV to the counter-

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affidavit of Respondents 1 to 3) was issued to the applicant offering the post of Director (Sugar Technical) in the Directorate of Sugar on the terms and conditions mentioned therein. This Memorandum shows that the appointment was to be on usual contract terms; the offer was initially for a period of one year in the first instance, but extendable thereafter upto a maximum period of three years; the applicant was required to convey his acceptance of offer within 15 days of issue of the Memorandum and to report for duty by 10th August, 1986. The applicant was also informed that he should also sign the Agreement Form prescribed for appointment on contract basis. In the letter addressed to the Medical Superintendent, Dr. Ram Manohar Lohia Hospital, New Delhi in connection with the medical examination of the applicant for appointment to the post under adjudication on 20.5.1986 (Annexure R-VI to the counter-affidavit of Respondents 1 to 3), it is clearly mentioned that the selection for appointment of the applicant is on contract basis. It is not disputed that the applicant got himself medically examined in pursuance of this letter and that he also joined the post on the date of the letter of offer itself i.e., 25.7.1986 even though he was allowed 15 days' time to do so. He also signed the Agreement Form on 31.7.1986. The departmental file also has a letter dated 20.5.1986 from the applicant in which with reference to the letter for medical examination, he had forwarded attestation form in quadruplicate in anticipation for character and antecedents verification with a view to avoid any procedural delays as, according to him, he was anxious to get the appointment at the earliest.

11. All these facts show that the applicant fully knew from the date of offer of appointment that his appointment was on a contract basis limited for a maximum

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period of three years and the agreements had been signed by him with open eyes of his own volition. The plea of coercion or undue influence or lack of free consent, as now advanced, can at best be after-thought. The applicant has not been able to show any action on his part which could even by inference imply that he accepted the offer of appointment under any compulsion or that he signed the contracts without his full consent or under undue influence or he was coerced to do that. If it had been so, he would have protested immediately after accepting the offer or after signing the agreement first on 31.7.1986 or after his appointment was notified in the Gazette or after the draft of the second contract was supplied to him in February, 1988 which was signed in April, 1988. In regard to this contract, the applicant had raised ^{the points} in his comments dated 29.2.1988 (Annexure IX to the application) regarding encashment of leave, entitlement to travel by air and that this agreement be treated in continuation of and supplemental to the agreement entered into on 31.7.1988, but none about the nature of his appointment or any compulsion or undue influence etc. The points raised by him were discussed by him with Deputy Secretary (Sugar) and vide his letter dated 5.4.88 (Annexure R-X to the counter-affidavit, he conveyed his agreement to the draft of this agreement. It is a clear evidence of application of mind by the applicant to the agreement entered into by him. Therefore, we have no evidence before us to come to a conclusion that the applicant was coerced to accept the appointment or to sign the contract.

12. The learned counsel for the applicant relied on the cases of CENTRAL INLAND WATER TRANSPORT CORPORATION LIMITED AND ANOTHER Vs. BROJO NATH GANGULY AND ANOTHER and CENTRAL INLAND WATER TRANSPORT CORPORATION LIMITED AND ANOTHER Vs. TARUN KANTI SENGUPTA AND ANOTHER (Civil Appeals Nos. 4412 and 4413 of 1985) (1986 (3) SCC 156).

(See)

The decision in these cases has no applicability in the case before us. In that case, Rule 9(i) of the Central Inland Water Transport Corporation Ltd. (Service, Discipline and Appeal) Rules, 1979 was, inter-alia, considered. This rule dealt with termination of employment for acts other than misdemeanour and it applied to permanent employees. The Rule was considered as both arbitrary and unreasonable and it wholly ignored and set aside the audi alteram partem rule, and was, therefore, held to be violative of Article 14 of the Constitution. It was also held to be opposed to public policy and as such void under Section 23 of the Indian Contract Act. There were no guidelines for terminating the employment of employees under this Rule, nor the level at which this authority could be exercised was laid down. The respondents in the appeals before the Supreme Court had joined earlier in a company which was taken over under a scheme approved by the Calcutta High Court by the Appellant Corporation; and the Central Inland Water Transport Corporation Ltd. (Service, Discipline and Appeal) Rules, 1979 became applicable to the respondents without their knowledge or consent.

13. The applicant also referred to 1988 (2) SLR 659 - Modern Food Industries (India) Ltd. Vs. M.D. Juvekar. This judgement also dealt with a clause in the contract being unconscionable and went by the decision of the Supreme Court in the case of Central Inland Water Transport Corporation Limited (*supra*). We have already discussed these aspects in preceding paras.

14. In the case before us, it was an open offer, the terms of which were clearly defined, the applicant had enough time to consider those terms and take whatever advice, legal or otherwise, as considered necessary by him. The services of the applicant have not been terminated before

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the expiry of the term of the contract. No clause in the contracts signed by the applicant has been shown to be unreasonable or unfair. The applicant, in his pleadings (para 6.7 of Rejoinder Affidavit dated 8.5.89), has admitted that an offer of appointment to the post of Managing Director of Sri Venkataswara Coop. Sugar Factory, Renigunta, in the scale of Rs.2000 - 2700 received by him was valid on the date of interview, that is to say, on 16.4.1986. This appointment order issued on 2.1.1986 is at Annexure IV to the application. The applicant has not been able to show as to why he could not accept that appointment even before going for interview for the post under adjudication. The post of Managing Director was undoubtedly in a much higher scale of pay. It was a firm order of appointment, the validity of which he got extended from time to time. Therefore, his plea of unequal bargaining power on the date of his appointment with the Union of India on the ground of his alleged unemployment cannot be given any weight. Theoretically it can be said that any person who seeks employment with the Government of India is faced with the situation of an unequal bargaining power, but in a case like this where the applicant is highly educated, did not accept an appointment in a much higher scale of pay with a higher designation, did not wait even for one day to react to the offer of appointment by the respondents, this plea of unequal bargaining power or of coercion or of unfair consent is devoid of any merit.

15. It has been contended before us that under the Recruitment Rules, appointment on short term contract can be made only of a person who is an officer of the Central Government / State Governments, universities and autonomous undertakings. Since the applicant on the date of appointment was not in service of any of the above organisations, he could not have been appointed on short term contract. It may be stated here that the process of

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selection commenced with the issue of circular dated 14.10.1985 inviting applications. Admittedly the applicant was serving with the Government on that date and continued as such at least until 31.3.1986. Thus the selection and consequential appointment of the applicant on short-term contract has to be held to be in accordance with Recruitment Rules. Even if, for the sake of argument, it is taken to be otherwise, the result would be that the applicant who alleges his appointment in violation of Recruitment Rules, is not only allowed to reap the benefits of appointment in violation of Recruitment Rules for the full contractual period of three years, but also claim the benefit of regularisation / extension thereunder. This would be against canons of natural justice and equity.

16. The learned counsel for the applicant argued before us that if the applicant's appointment is not treated as a case of direct recruitment, then his appointment should be deemed to have been made as a direct recruit by deemed relaxation of the Recruitment Rules. For this, reliance was placed on the case of G.S. LAMBA AND OTHERS Vs. UNION OF INDIA AND OTHERS (1985 (1) SLR 687). We have gone through Lamba's case and find that it is not applicable to the facts of this case. In Lamba's case, Government's action of appointing promotees to posts which under the quota prescribed under the recruitment rules should have been filled by direct recruits and those who qualified in the Limited Departmental Competitive Examination, for a number of years, was declared to have been done under deemed relaxation of the rules. The question of inter-se seniority of recruits through different channels was involved and the Hon'ble Supreme Court came to the conclusion that where there was an enormous departure in following the quota rule year to year, an inference was permissible that the departure was

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in exercise of the power of relaxing the quota rule conferred on the controlling authority and once there is power to relax the mandatory quota rule, the appointments made in excess of the quota from any given source would not be illegal or invalid.

17. In the instant case, it was argued on behalf of the respondents that without the Recruitment Rules being challenged by the applicant, any declaration by us to the effect that the applicant would be deemed to have been appointed as a direct recruit in relaxation of the Recruitment Rules would be a violation of Article 14 of the Constitution of India as it would be a case of denial of equal opportunity and equal protection of law as the post was never advertised for being filled in by direct recruitment, since it was not a case of direct recruitment. Many others who possess the qualifications required for direct recruitment could have applied and competed for the post. We agree with this contention and hold that the applicant's appointment cannot be deemed to have been made as a direct recruit by deemed relaxation of the Recruitment Rules.

18. The learned counsel for the applicant argued in the end that if the appointment is held to be contractual, then extension of contract should be given. The Recruitment Rules provide that the appointment will ordinarily be for a period of three years. The applicant has already been allowed a contract for three years. It is for the respondents to consider whether or not to extend the contractual term of the applicant and not for this Tribunal to issue any directions to them on a matter requiring policy decision.

19. On the issue of fixation of pay in the Revised scale and the payment of arrears of pay and allowances in pursuance thereof, the case of the applicant, in brief, is that in the pre-revised scale of Rs.1500-60-1800, his pay was fixed at the maximum of the scale i.e., at Rs.1800/- and, therefore, in the revised scale of Rs.3700 - 5000 his pay should have been fixed at the maximum of the revised scale i.e., at Rs.5,000/-. He has also pleaded

that Shri M.P. Gupta, who is holding the other post of Director (Sugar Technical) against the promotion quota is drawing higher pay even though on the date of appointment of the applicant to the post, Shri M.P. Gupta was his subordinate as he was holding the post of Deputy Director in the scale of Rs.1100-1600. Accordingly, he has asked for equal pay for equal work and relied on various rulings of the Hon'ble Supreme Court in which the principle of 'equal pay for equal work' has been upheld. The applicant has asked for fixation of pay at Rs.5,000 with effect from the date of his appointment, but during the oral arguments before us, the learned counsel for the applicant pleaded for fixation of pay of the applicant at the stage of Rs.4200/- in the scale of Rs.3700 - 5000 corresponding to the pay of Rs.1800 in the pre-revised scale of Rs.1500-60-1800 as per Model 26 of Swamy's Compendium of Government Orders on Fourth Central Pay Commission Report, read with Rule 7 of C.C.S. (Revised Pay) Rules, 1986. This rule deals with fixation of initial pay in the revised scale.

20. The case of respondents 1 to 3 is that while fixing the pay of the applicant on his appointment in the scale of Rs.1500-60-1800, he was given five increments and not the maximum of the scale of pay and it is a coincidence that his pay with five increments happened to be Rs.1800, which was the maximum of the pre-revised scale. It has further been contended that the C.C.S. (Revised Pay) Rules, 1986 are not applicable to those employees who were on contractual appointments and accordingly the benefit of pay fixation as per these rules is not admissible to the applicant whose appointment was on contract and who had been appointed to the post of Director (Sugar Technical) with effect from 25.7.1986. It has been explained to us, and this is borne out by the departmental file No.A-19011/1-87-SDI, which is the Personal File of the applicant, that

while fixing his pay in the revised scale of Rs.3700 - 5000, he was given the benefit of his pay in the pre-revised scale of pay, both the instalments of Interim Relief, D.A. of all kinds, but he was not given the benefit of increasing the existing emoluments by 20 per cent of the basic pay before fixation of pay in the revised scale, as he was not holding the post of Director (Sugar Technical) as on 1.1.1986. If he was in service on 1.1.1986 in the Custodian General's Organisation for Notified Sugar Undertakings as appears to be the case, his pay on the post of Chief Manager (Technical) in that Organisation would have been fixed in the revised scale of that post, if any, in accordance with the C.C.S. (Revised Pay) Rules, 1986 for the period 1.1.1986 till he demitted that post. We, therefore, find no irregularity or anomaly in fixation of pay of the applicant in the revised scale.

21. As regards the plea of 'equal pay for equal work' and alleged violation of Article 14 of the Constitution of India, it has been stated on behalf of the respondents that the pay scale of the post held by Shri M.P. Gupta as Director (Sugar Technical) as well as the pay scale of the identical post held by the applicant were exactly the same, that is to say, pre-revised Rs.1500-60-1800 and the revised scale Rs.3700 - 5000. This has not been disputed by the applicant. The actual pay drawn by both the incumbents happens to be different because Shri Gupta was working on a lower post in a lower scale of pay as on 1.1.1986, with effect from which the revised scale came into operation and he got the benefit of 20 per cent of basic pay being added to his existing emoluments while fixing his pay with effect from the relevant date, and later on his pay in the higher scale of Rs.3700 - 5000 on promotion to the post of Director (Sugar Technical) was fixed in accordance with the rules. It is not uncommon that incumbents holding identical posts but coming through

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different channels of recruitment can draw in fact different amounts of emoluments. Such situations are not violative of the principle of 'equal pay for equal work'. What is relevant is whether the scale of pay is identical or not. In this case, the scale of pay is identical for the two incumbents for the two posts of Director (Sugar Technical) in the Directorate of Sugar, Department of Food. As no violation of the principle of 'equal pay for equal work' is involved, we do not consider it necessary to go into the various rulings cited on behalf of the applicant.

22. In view of the above discussion, we, therefore, hold that there is no infirmity in the contract of appointment and the appointment of the applicant cannot be deemed to have been made as a direct recruit. We further hold that the pay of the applicant in the revised scale has been rightly fixed as he is not entitled to the refixation of pay either at the stage of Rs.5000 or at the stage of Rs.4200 in the revised scale of Rs.3700 - 5000. We, therefore, see no merit in this application which is accordingly dismissed. In the circumstances of the case, there is no order as to costs.

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

24/7/89
24/7/89
(P.K. KARTHA)
VICE CHAIRMAN