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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No. 1163/1989.

Date of decision: 23.11.1990.

Shri Ram Mohan Nigam & Ors. ... Applicants.

Vs.

Union of India & Ors. ... Respondents.

✓ O.A. No. 829/1989.

Shri Phool Chand ... Applicant.

Vs.

Union of India & Ors. ... Respondents

O.A. No. 751/1989.

Shri Raj Kumar & Another ... Applicants.

Vs.

Union of India & Ors. ... Respondents.

CORAM

Hon'ble Mr. Justice Amitav Banerji, Chairman.

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

For the applicants in OA 1163/89 Shri G.D. Gupta,
in OA 829/89 & OA 751/89 Shri K.L. Bhandula,
counsel.
For the Respondents. - Shri M.L. Verma,
Counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

These three Applications raise identical questions
of law and fact and have been heard together and we
propose to decide them by a common order.

A short question for consideration in these O.As
pertains to the principle of "equal pay for equal work".
Applicants have urged that their case is similar to that of

other Junior Computers who were promoted and given higher scale of pay with effect from 1.1.1973 on the basis of decisions given by the Principal Bench of the Central Administrative Tribunal in the following cases:

T-335/85 B.S.Saini & Anr. Decided on 11.4.1986.
Vs.
U.O.I. & Anr.
(Annexure A-4).

OA 1942/87 A.K.Khanna & Ors. Decided on 6.9.1988
Vs.
U.O.I. & Ors.
(Annexure A-5)

OA 1682/87 K.S.MUNDA & ORS. Decided on 16.11.1988
Vs.
U.O.I. & Anr.
(Annexure A-6).

It is stated that when the applicants made a representation to the Government for implementation of the judgments pronounced in OA 1682/87 - K.S.Munda & Ors. case (supra)

and other in OA 212/1988 - GANGADHAR RAO & ORS. in their cases the Government of India, Ministry of Water Resources, New Delhi replied to the Chairman, Central Water Commission, Sewa Bhavan, New Delhi vide letter

No.8/28/87-Estt.I dated 24th February, 1989 (Annexure A-8)

to the OA in paragraph 2 as under:

"2. As regards the proposal to extend the judgement to the similarly placed persons, it has been decided that benefit of higher scale may be allowed to them on notional basis with effect from 1.1.1973 and actual basis with effect from 1.12.1988. The similarly placed Senior Computers for this purpose (for higher scale of pay) will be only those who were in the scale of Rs.150-380 prior to

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1.1.1973 and were placed in the scale of Rs.330-560 based on the recommendations of the Third Pay Commission."

It meant that persons similarly placed will be given the benefit of higher scale on notional basis with effect from 1.1.1973 and ^{on} actual basis with effect from 1.12.1988. Similarly, the Government took the stand that the Senior Computers were only those who were in the scale of Rs.150-380 prior to 1.1.1973 and were placed in the scale of Rs.330-560 based on the recommendations of the Third Pay Commission.

Aggrieved by the above, the applicants in these three sets of O.As have challenged the above order dated 24.2.1989 issued by the Ministry of Water Resources, New Delhi (Annexure A-8) and have prayed for quashing the same. They have prayed for following reliefs:

- (i) directing the respondents to allow all the senior computers including the applicants herein the revised scale of pay, i.e., Rs.425-700 from the date from which they are entitled for the said scale;
- (ii) directing the respondents to give all the incumbents of the posts of Senior Computers including the applicants herein the scale of Rs.425-700 from 1st January, 1973 or from the dates from which they were promoted/appointed with all consequential benefits like arrears of pay, allowances, seniority etc.;
- (iii) further directing that all the incumbents of the posts of Senior Computers including the applicants herein are entitled to the scale of pay of Rs.425-700; ..."

On behalf of the respondents, three pleas are taken; firstly, the Applications are misconceived and not maintainable under law as no cause of action had accrued in favour of the applicants against the respondents. Applications are barred by time; secondly, the judgments relied upon by the applicants are judgments in personam and not the judgments in rem and as such, the above cited judgments were ineffective and inapplicable.

Lastly, it was urged that the order of the Ministry of Water Resources dated 24.2.1989 clarified the position and the applicants were not entitled to the reliefs asked for

in the O.A.s.

We have heard Shri G.D.Gupta and Shri K.L.Bhandula for the applicants and Shri M.L.Verma for the respondents.

Shri G.D. Gupta urged that some of the applicants were initially recruited as Junior Computers in the C.W.C.

and some were appointed as Junior Computers in the then

Ministry of Irrigation and Power and some were appointed

as Junior Computers in Ganga Basin Water Resources

Organisation (hereinafter referred to as "the organisation")

It was further stated that some of ^{the} applicants were,

however, directly appointed as Senior Computers. Such

of the applicants who were initially appointed as

Junior Computers, were later on promoted as Senior

Computers. The dates of appointments of the applicants as Junior Computers/Senior Computers and dates of promotions as Senior Computers are given in Annexure A-1. It was also stated that such of the Junior Computers/Senior Computers who were working either in the Organisation or in the Ministry, they along with others working with them, were all transferred to the C.W.C. w.e.f. 3.11.1978.

In 1963, Recruitment Rules in the case of the Organisation were promulgated and they were called as Ministry of Irrigation and Power (Ganga Discharge Circle) Non-Ministerial and Ministerial Class III Posts Recruitment Rules, 1963.

At that time, the Organisation was named as Ganga Discharge Circle. Later on it was renamed as Ganga Water Resources Circle in 1970 and in 1972 it was further renamed as Ganga Basin Water Resources Organisation. Recruitment

Rules of all the three Departments showed that the post of Senior Computer has been a non-selection post and so far as the method of promotion is concerned, the promotion was required to be made from amongst Junior Computers. The number of posts as Senior Computers was increased manifold.

Until the promulgation of the Central Civil Services (Revised Pay) Twenty-fourth Amendment Rules, 1974 (for short, "the Revised Pay Rules of 1974"), the scale attached

to the post of Senior Computer was Rs.150-380. Subsequent

to the coming into force of the Revised Pay Rules of

1974, the scale of pay for the post of Senior Computer

was raised to Rs.425-15-500-EB-15-560-20-700 (partly)

and Rs.330-560 (partly). This was raised on the

basis of the recommendations of the Third Pay Commission.

The applicants were all promoted as Senior Computers

in accordance with the aforementioned Recruitment Rules.

It was further stated that in view of the aforesaid revised

Pay Rules of 1974, the senior most persons according to

the seniority list of Senior Computers of each Department

were given the scale of Rs.425-700 but not the applicants,

who were given the pay scale of Rs.330-560 w.e.f. 1.1.1973.

Applicant No.1 in DA 1163/89 was given the senior scale

of senior Computer (Rs.425-700) on 27.7.1977 and applicant

No.3 from 6.6.1977. Two colleagues of the applicants

who were working as Senior Computers in the erstwhile

Organisation viz., Sarveshri B.S.Saini and Jaipal Singh

filed a writ petition in the High Court of Delhi (Civil

Writ No. 698 of 1977) challenging inter alia the validity

of the revised pay scales for the post of Senior Computer

to the extent of Rs.330-560 and the Government not giving

the scale of Rs.425-700 to all the Senior Computers on

various grounds. The Writ Petition was transferred to the Tribunal and numbered as T-335/1985. This was heard and allowed by a Division Bench of this Tribunal.

Some other colleagues Shri A.K.Khanna & Ors. filed an OA No.1942/87 before the Principal Bench and by a

decision dated 6.9.1988, the Application was allowed.

Similarly, another set of colleagues of the applicants,

K.S.Munda & Ors filed OA No.1682/87 and the same was

decided on 16.11.1988 by following the above decisions

of the Tribunal. The applicants hoped that their

case would be dealt with in the same way as in the

case of their other colleagues in the above judgments

but they were not given the benefit. Thereafter, the

applicants prayed for giving them the similar benefit

as was given to A.K.Khanna & Ors and K.S.Munda & Ors

(supra). This prayer was more or less rejected by the

Government by order dated 24.2.1989. Learned counsel

for the applicants contended that the facts and law

applicable to them are exactly the same as in the

cases of B.S. Saini & Anr., A.K.Khanna & Ors. and

K.S.Munda & Ors. (supra) and they were entitled to the

same reliefs. He argued that the principle of

"equal pay for equal work" was fully applicable in their

case and the same had been granted to their colleagues.

All of them were similarly placed and did similar work

and hence, there was no justification for giving them

higher scale on notional basis with effect from 1.1.1973

and actual basis with effect from 1.12.1988.

In support of his contention, Shri G.D.Gupta,

learned counsel for the applicants referred to the

cases of B.S. Saini & Anr., A.K. Khanna & Ors. and

K.S. Munda & Ors. (supra). In addition, he cited a

decision of the Supreme Court in the case of P. SAVITA

AND ORS. V. UNION OF INDIA & ORS. (AIR 1985 SC 1124).

The Supreme Court held that where all relevant considerat-

ions are the same, persons holding identical posts and

discharging similar duties should not be treated

differently. The matter pertained to Senior Draughtsmen

in Ministry of Defence Production who were discharging

same functions classified in two groups. That higher

pay scale was granted to one group not on any merit-cum-

seniority basis but only on seniority-cum-fitness basis.

Another ground was that there was no denial anywhere

that both of these types of Draughtsmen did the same

work and discharge the same functions and duties.

Similar is the position in the present O.As. One

group of Senior Computers is being given lower scale of Rs.330-560 where as the other group is given the scale of Rs.425-700. The decision of the Supreme Court in the case of P.SAVITA & ORS (supra) was followed in the case of B.S. SAINI & ANR (supra) and the Division of the Tribunal held:

"The order revising the pay scales attached to the post of Senior Computers to Rs.330-560 is accordingly quashed and the petitioners are declared entitled to the post of Senior Computers in the revised pay scale of Rs.425-700. The petitioners would be entitled to the higher pay scale and all attendant benefits including all arrears with effect from the date the revised pay scale of Rs.425-700 became effective..."

Subsequently, in the case of A.K.KHANNA & ORS (supra) reference was made to the decision in the case of

B.S. SAINI & ANR (supra) and it was stated that all

the Senior Computers were governed by the same rule

which governed the petitioners in T-335/85. A plea

was taken there that the applicants were not party

to the Civil Writ Petition which later became T-335/85.

It was rejected and the Division Bench held:

"But there is no valid reason not to extend the benefit of that judgment to the applicant when they are similarly placed as the petitioners in T-335/85. In fact instead of driving each of the senior computer to seek redressal of grievance before the Tribunal, when judgment in T-335/85 had become final, the respondents should have extended the benefit of that judgment to the entire class of Senior Computers similarly placed. The respondents would be well

advised to direct the department to extend the benefit of the judgment of Courts and Tribunal which have become final to all employees similarly placed and not drive each of them to seek redressal of their grievance before the Tribunal. In this particular (emphasis supplied)

petition the only ground taken by the respondents is that they (applicants) were not the petitioners in the earlier petition. When the applicants are similarly placed, and are governed by the same rules the benefit as extended to the petitioners in T-335/85 should have been extended to them also. Not extending similar benefit would amount itself to a discrimination violative of Articles 14 and 16 of the Constitution. Hence there shall be an identical direction as was issued in T-335/85....."

In the case of K.S. MUNDA & ANR (supra), Shri

M.L. Verma had also raised an argument there that the earlier judgments were in personam and not in rem and they could not be applied here. This contention was

repelled by the Division Bench in the following words:

"We are not impressed by the contention of Shri Verma since in Saini's case the notification creating two scales was itself quashed and that notification applied to all Senior Computers. We are, therefore, satisfied that the judgment in Saini's case was a judgment in rem."

This judgment as a matter of fact gives an answer to the

point raised by Shri M.L. Verma on behalf of the respondents

in these O.A.s. We respectfully agree with the

reasoning given by the Division Bench in K.S. MUNDA

& ANR case (supra), and find that the plea of the

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doctrine of "equal pay for equal work" to the applicants is applicable. The principle laid down by the Supreme Court in the case of P.SAVITA & ORS (supra) is fully applicable in these cases as the applicants are similarly situated like the applicants in B.S. SAINI & ANR's case and K.S. Munda & Anr.'s case. Another reason given is that the rule itself was struck down in B.S. SAINI's case, it is not open to the respondents to rely on that rule in subsequent cases. As a matter of fact, we are of the view that the pleas that are being raised by the respondents are frivolous and driving Senior Computers to seek redress from the court when it should have been granted by the department itself.

Shri M.L. Verma, learned counsel for the respondents cited the decision of the Supreme Court in the case of STATE OF U.P. & ORS. V. J.P. CHAURASIA & ORS.

(AIR 1989 SC 19). He urged whether two posts are equal and should carry equal pay is an administrative question and courts should not interfere. This was a case of Bench Secretaries and Section Officers of Allahabad

High Court. Bench Secretaries were classified in Grade I and Grade II on merit-cum-seniority basis. The Supreme Court held that two pay scales in same cadre of persons performing same or similar duties were permissible on the ground that Grade I had longer experience and carried more responsibilities. There is no such basis for classification in the present case. Consequently, this authority is inapplicable to the facts of the present case.

similar views in the case of STATE OF U.P. & ORS.
(supra) was taken in the case of UMESH CHANDRA GUPTA
AND OTHERS V. OIL NATURAL GAS COMMISSION AND OTHERS.

(AIR 1989 SC 29). Their Lordships found that there was
a distinction between Technicians Grade II and grade III
working in a Corporation and the former appeared to be
better qualified than the latter. A classification could
be done in such a case and, therefore, this citation
is entirely distinguishable.

Shri Verma then cited the case of MEWARAM KANDJIA

Vs. ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ORS.

(AIR 1989(2) SC 17). In this case it was held that
even if the functions and duties of two posts are similar
it is open to the State to prescribe different scale of
pay on the basis of difference in educational qualification
Principle of equal pay for equal work could not be invoked
invariably in every kind of service, particularly,
in the area of professional services like medical
practitioners. This case is also distinguishable on
facts.

Learned counsel for the respondents also cited
the case of RANDHIR SINGH V. UNION OF INDIA AND OTHERS

(AIR 1982 SC 879). This case makes it clear that the
principle of 'equal pay for equal work' is not a mere
demagogic slogan. It is a constitutional goal capable
of attainment through constitutional remedies, by the
enforcement of constitutional rights.

One more matter which was raised by Shri M.L. Verma pertains to the question of limitation. He has urged that the O.As have been filed in the year 1989 for seeking relief in a matter pertaining to 1973. We do not think that the matter can be made to look so simple as that. There are three different decisions of the Principal Bench of the Tribunal which have recognised that all the Senior Computers are entitled to the scale of Rs.425-700 with effect from 1.1.1973.

The department itself accepts this position but says that it would be notional and this decision of the department that it would be notional and not actual was mentioned in the order dated 24.2.1989 (Annexure A-8).

The cause of action, therefore, arose in February, 1989, and the Department further said that they would be given higher scale on notional basis with effect from 1.1.1973 and actual basis with effect from 1.12.1988. This is bone of contention. Consequently, the plea that it was a matter pertaining to 1973 is wholly misconceived. We reject the contention as untenable.

We do not see any difference in fact in the case of the present applicants to that of the other Senior Computers who have been given the benefit from 1.1.1973 after the relevant rules have been quashed in the cases of B.S. SAINI & ANR, A.K. KHANNA & ORS and K.S. MUNDA & ORS. (supra). There is only one pay scale to be granted to the Senior Computers and as all these Computers were in service prior to that date, they are entitled to the

pay scale of Rs.425-700 from the dates they were entitled to the said scale.

In the result, all these O.As are allowed and the respondents are directed to treat all the applicants as Senior Computers in the revised pay scale of Rs.425-700 from the dates ^{from which} they are entitled to the said scale and not from 1.12.1988. Secondly, all the applicants will also be entitled to all consequential benefits like arrears of pay, allowances and seniority etc. The above order will be complied within a period of three months from the date of service on the respondents. There will be no order as to costs.

(I.K.RASOOTRA)
MEMBER (A)
27/4/90

(AMITAV BANERJI)
CHAIRMAN

SKS