

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1582/88

1988

T.A. No.

DATE OF DECISION 21.4.1989.Shri D.C. Aggarwal

Petitioner

Shri B.B. Saahney,

Advocate for the Petitioner(s)

Versus

Union of India & Another

Respondent

Shri P.P. Khurana,

Advocate for the Respondent(s)

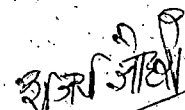
CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. Ajay Johri, Administrative Member.

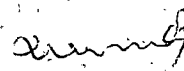
1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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



(Ajay Johri)

Administrative Member



(P.K. Kartha)

Vice-Chairman (Judl.)

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Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. DA-1582/88

Date 21.4.89.

Shri D.C. Aggarwal

.... Applicant

Versus

Union of India &
Another

.... Respondents

For the Applicant

.... Shri B.B. Sawhney, Advocate

For the Respondents

.... Shri P.P. Khurana, Advocate

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri Ajay Johri, Administrative Member.

(Judgement of the Bench delivered by Hon'ble
Shri Ajay Johri, Administrative Member)

The applicant, who has worked as Supervisor in the Office of the Comptroller & Auditor General of India, New Delhi, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the respondents should be directed to give him the scale of Rs. 650-1040 (revised: Rs. 2000-3200) w.e.f. 1.3.1984 and as a second alternative, w.e.f. 1.6.1986, that his basic pay be refixed on the same basis as the basic pay of erstwhile Section Officers (redesignated as Assistant Audit Officers upon reorganisation) and that arrears of salary and other benefits should be paid to him.

2. The facts of the case in brief are as follows.

The applicant was appointed as Upper Division Clerk in the Office of the Accountant General, U.P. in 1951. Thereafter, he came on deputation to the Office of the Comptroller & Auditor General of India, New Delhi, in 1958. He was promoted as a Selection Grade Auditor in 1970 and as Supervisor, w.e.f. 1.6.1983. He continued to work as a Supervisor till his retirement upon attaining the age of

superannuation on 30.9.1987.

3. The organisational set up and cadres of the offices falling under the Indian Audit and Accounts Department (including Office of the Comptroller & Auditor General of India) were restructured during the period w.e.f. 1.3.1984. As a result of this, there was bifurcation of offices and cadres into Audit Offices/Cadre & Accounts Offices/Cadre. The scales of pay of the various posts prior to and after the reorganisation were as follows:-

Pre-reorganisation posts		Corresponding Post-re-organisation posts	
A.(a) Auditors	Rs.330-560	A.(a) 20% Junior Auditors	Rs.330-560
(b) Selection Gr. Auditor	Rs.425-700	(b) 80% Senior Auditors	Rs.425-800
B.(a) Supervisor/ Section Officer	Rs.500-900	B.(a) 20% Section Officer (Audit)	Rs.500-900
(b) Selection Gr. Section Officer	Rs.775-1000	(b) 80% Asstt. Audit Officer	Rs.650-1040
C. Accounts Officer	Rs.800-1200	C. Audit Officer	Rs.840-1200.

4. The applicant has stated that at one time employees who had not passed the Subordinate Accounts Service (SAS) Examination, now called 'Section Officers' Examination', were not eligible for promotion beyond the post of Selection Grade Auditor. However, there was a scheme whereunder exemption from this requirement was granted in the normal course and persons were promoted to the post of Section Officer. Subsequently, the said scheme was withdrawn and instead, such employees were promoted as 'Accountants' in the same scale of pay and assigned the same duties and functions as Section Officers. This practice was, however, discontinued. In 1980, a scheme was introduced whereby

employees who had not passed SAS Examination, were promoted as 'Supervisors' in the same scale of pay and assigned the same functions and responsibilities as Section Officers. The scheme for restructuring of the Audit Cadre introduced w.e.f. 1.3.1984, provided for 80 per cent of Section Officers, including Selection Grade Officers to be appointed to the newly created posts of Assistant Audit Officers (Rs.650-1040) and the remaining 20 per cent to be appointed as Section Officers (Audit). The posts of Supervisors were, however, not included in the restructured cadre and further appointments as Supervisors were discontinued and thereby avenues of promotion on the Audit side for officers who had not passed the S.A.S. Examination, were closed, whereas such avenues remained open for officers on the Accounts side. The applicant has relied upon para.1.2.4 of the Manual of Instructions for restructuring of cadres (1983-84) issued by the Comptroller & Auditor General of India which, inter alia, provides as follows:-

"The existing supervisors will be adjusted against 20% of the SOs posts in the scale of Rs.500-900. An exercise will be carried out later to identify posts within these offices which can be brought on to the Accounts staffing pattern. The general policy is to provide for the posts of supervisors only in the Accounts and Entitlement Offices."

5. The respondents, in their counter-affidavit, have denied the aforesaid averments. According to them, in the Audit and Accounts Department, in order to become eligible for promotion to the first level of supervision of Sections, the staff have to qualify in departmental examination known as S.A.S. Examination. In order to meet the shortage of the aforesaid qualified staff, a

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scheme for promotion as 'Accountant' for filling up some of the posts of purely accounting-cum-administrative nature by Upper Division Clerks (including Selection Grade Clerks) who had not qualified in the SAS Examination, was introduced in 1966 in the Department. Under this scheme, appointments were made on purely temporary basis and persons were promoted as Accountants who had not qualified the S.A.S. Examination. Such persons stood to be reverted as and when qualified staff who had passed the SAS Examination, became available. Subsequently, such officials were designated as Supervisors. The respondents have referred to para.298(b) of C.A.G.'s Manual of Standing Orders, Vol.I in this respect. According to these instructions, such persons were allowed to draw pay in the S.A.S. scale so long as they held the supervisory charge and were designated as Supervisors. When the restructuring came into being in March, 1984, this scheme of promotion as Supervisors was dropped, but the existing Supervisors as on 1.3.1984 were allowed to continue till qualified staff were available. The Supervisors were fitted against the quota of 20 per cent of these posts of Section Officers in the scale of Rs.500-900. According to the respondents, the Supervisors and Section Officers are not equals, not only on the basis of qualifications but also because the Supervisors are not eligible for further promotion as provided in the scheme introduced in 1966. Also, to be promoted to the Grade of Rs.650-1040 which was introduced on 1.3.1984, three years' regular service as Section Officer was necessary. So, since the applicant was appointed as Supervisor on 1.6.1983 as a purely ad hoc

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arrangement, the principle of 'equal pay for equal work' does not apply to his case. The memorandum No.F-5(32)-N-III/86-Pt.II dated 12.6.1987 which has been annexed by the applicant, does not also mention in regard to the post of Supervisors. Thus, according to the respondents, the applicant has no case.

6. We have heard the learned counsel for both the parties. It was pleaded on behalf of the applicant by the learned counsel that since the applicant was performing the same duties (Annexure P-1 of the application), he is entitled to be covered under the principle of 'equal pay for equal work'. Moreover, the applicant had also been allowed the SAS scales of pay and, therefore, on this ground also, he is entitled to the protection and he must be given the relief. These submissions were opposed by the learned counsel for the respondents on the ground that the applicant was not qualified for promotion to the post of Assistant Audit Officer as he had not passed the S.A.S. Examination and he has not completed three years' service as Section Officer. He reiterated what has been said by the respondents in their reply that Supervisors were actually Clerks who were promoted under para. 2,9,8 (b) of the Manual of Instructions. It was submitted by the learned counsel for the respondents that since the qualifications are different for the post of Assistant Audit Officer and Supervisor, who is now designated as Section Officer, there could be no automatic promotion. We have also gone through the application, the reply filed by the respondents and the rejoinder filed by the applicant. At page 14 of the application (Annexure P-2), is the first representation made by the applicant on 19.4.1984 after restructuring came into being. In this representation, the applicant

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had brought out that before restructuring, the Supervisors were at par with the S.A.S. Accountants but after the restructuring, the S.A.S. Accountants had been given a scale of Rs.650-1040 and a separate designation with gazetted status, while the Supervisors have been denied the same. It was his contention in this representation that since 80 and 20 per cent ratios have been kept in the S.A.S. Cadre, it would be reasonable as well as fair if this ratio is also given to the Supervisors. The grounds for making this request were that the Supervisors were doing the same work and sharing the same responsibilities as that of the SAS Accountant, and if this was agreed to, it would give some extra retirement benefits to the Supervisors. He had further gone on to say that in the case of the Supervisors who are graduates/post-graduates and who were deserving, they must be considered for being given promotion to the senior scale not as Assistant Audit Officer but as Senior Selection Grade Supervisors in the ratio of 80 and 20 per cent or any other ratio that may be deemed fit. This representation was replied to by the Administrative Officer on 28th June, 1984 when he was informed that his request had been considered carefully but it could not be acceded to. The applicant appears to have made some other representations thereafter on 4.1.1985, which was also replied to by the Department on 2.2.1985. In this ^{case also,} he was informed that the scheme of restructuring of cadres does not envisage further appointment of Supervisors in the separate Audit Office and that the existing Supervisors have been allowed to continue against the posts of Section Officers in the scale of Rs.500-900 with a Special Pay of Rs.125/- as

personal to them and this representation was also rejected. However, the applicant continued to make further representations and he was replied to also in November, 1985, February, 1987 and August, 1987. The above facts which are reflected by the Annexures to the application, make it clear that the applicant's first representation was made in April, 1984 and he had been given a reply rejecting his representation. Normally, subsequent representations will not take care of limitation and the applicant should have moved the appropriate forum for redressal of his grievance if he was not satisfied with the reply of the Administration given to him in June, 1984 (Annexure P-2) some time thereafter. He has, however, moved this application on 9th August, 1988. In our opinion, this application has been filed belatedly and is barred by limitation.

7. Leaving aside the above, even on the merits of the case, the Hon'ble Supreme Court has given a number of decisions which dictate the application of the principle of 'equal pay for equal work' in various situations. We will like to refer to ~~the~~ some of the decisions in the following paragraphs.

8. In A.I.R. 1988, S.C. 1291, the Federation of All India Customs & Central Excise Stenographers Vs. Union of India and Others, the Hon'ble Supreme Court had in paras. 7 and 11 of their judgement, observed that 'equal pay for equal work' which is a Fundamental Right, is governed by the principle that equal pay must depend upon the nature of work done. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. The

Hon'ble Supreme Court further observed 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 and so long as the value judgement is made bona fide, reasonable and on intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The Hon'ble Supreme Court further observed that it is important to emphasise that 'equal pay for equal work' is concomitant of Article 14 of the Constitution but it follows naturally that 'equal pay for unequal work' will be a negation of that right. In para.11, the Hon'ble Supreme Court have observed as follows:-

"11. In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on intelligible basis. 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 cannot 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 judgement 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 at mala fide either in law or in fact. In the light of the averments made and in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved. In that view of the matter, this application must fail and it is accordingly dismissed without any order as to costs."

9. Similarly, in A.I.R. 1989, S.C. 19, State of U.P. Vs. J.P. Chaurasia & Others, in para.17 of their judgement the Hon'ble Supreme Court made the following observations:-

".....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."

10. In New Ram Kanojia Vs. All India Institute of Medical Sciences & Others, 1989 (1) SCALE, p.580, the matter regarding equal pay for equal work was again considered by the Hon'ble Supreme Court in the case of Hearing Therapists and Senior Speech Pathologists. The Hon'ble Supreme Court dismissed the appeal and held that Hearing Therapists and Senior Speech Pathologists/Audiologists both render professional services and there is qualitative difference between the two, on the basis of educational qualifications and the principle of 'equal pay for equal work' cannot be invoked or applied. This is what they observed in para.5 of their judgement:-

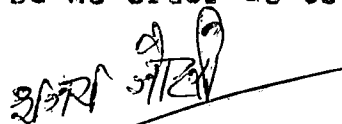
"5...While considering the question of application of principle of 'Equal pay for Equal Work' it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scales but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14, 16 and of the Constitution. Equality must be among the equals. Unequals cannot claim equality."

11. In our opinion, the dicta laid down by the Hon'ble Supreme Court in the above cases, squarely applies to the present case. There is no disagreement on the facts that the applicant did not possess the S.A.S. qualification and the requisite experience and, therefore, as a Supervisor, he could not be fitted into the restructured post of Assistant Audit Officer. As observed by the Hon'ble Supreme Court in State of U.P. Vs. Chaurasia, the quantity of work may be the same, but quality may be different. These cannot be determined by relying on averments and affidavits of interested parties and has to be left to the Executive to determine. The principle has no mechanical application and it has to read into Article 14 which permits reasonable classification. In our opinion, therefore, the applicant has not been able to make out any case for the application of the principle of 'equal pay for equal work' in his case. In 1982, S.C. 879, Randhir Singh Vs. Union of India in para.6, the Hon'ble Supreme Court had observed that it was true that equation of posts and equation of pay are matters primarily for the Executive and expert bodies and not for the Courts, but where all things are equal, i.e., where all relevant considerations are the same, persons holding identical posts, should not be treated differently in the matter of their pay merely because they belong to different departments. According to the Hon'ble Supreme Court, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar

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pay merely because the posts are of the same rank and the nomenclature is the same. We find that even on these grounds, the ratio does not apply to the applicant's case. All things are not equal in this case. It is clear from the facts available that the applicant's case is similar to the earlier cases cited in paras. supra and theirs is the governing ratio.

12. We may also refer to the decision of the Constitution Bench of the Supreme Court in Shri Kishori Mohan Lal Bakshi Vs. Union of India, A.I.R.1962 S.C. wherein the Supreme Court observed that the abstract doctrine of 'equal pay for equal work' has nothing to do with Article 14. In that case, one of the contentions raised by the petitioner was that there was discrimination between Class I and Class II Income Tax Officers inasmuch as though they did the same kind of work, their pay-scales were different. The Supreme Court rejected this contention and observed that there was no violation of Article 14 of the Constitution.

13. On the above considerations, we reject this application which is devoid of any merits. There will be no order as to costs.


(Ajay Johri)
Administrative Member


(P.K. Kartha)
Vice-Chairman(Judl.)