

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1163/88 D.A. No. 645/1989. 198

DATE OF DECISION Sept. 28, 1989.

OA 1163/88.

Dr. Brij Mohan Sabharwal & Ors.
OA 645/89.

Dr. Vikash Kapila & Ors.

Petitioner

Shri V.S.Madaan & Mrs. K.K.Madaan, Advocate for the Petitioner(s)

VERSUS

Dean, Maulana Azad Medical College and Ors. **Respondents**

Shri J.S. Bali, Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman, . .

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

(Amitav Banerji)
Chairman
28.9.1989.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.1163/1988

Date of decision: September 28, 1988

Dr. Brij Mohan Sabharwal & Ors. ... Applicants.

Vs.

Dean, Maulana Azad Medical College & Ors. ... Respondents.

O.A. 645/1989.

Dr. Vikash Kapila & Ors ... Applicants.

Vs.

Dean, Maulana Azad Medical College ... Respondents.
& Ors.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicants ... Shri V.S. Madaan & Mrs. K.K. Madaan, Advocates.

For the respondents ... Shri J.S. Bali, Counsel.

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

These two Applications raise identical questions and can be disposed of by a common judgment. The applicants are all qualified dentists possessing the Degree of Bachelor of Dental Surgery (BDS). They are all working as Junior Residents in Dental Wing of Maulana Azad Medical College, New Delhi. They are aggrieved by the fact that although they perform the similar work and have the same responsibilities as that of Doctor Vishruti Bagga and Dr. Ajay Gupta, Junior Residents (Dental) in the Lok Nayak Jai Prakash Narayan Hospital, yet they are not accorded

the same amount of emoluments as the above mentioned two Junior Resident. While Dr. Vishruti Bagga and Dr. Ajay Gupta get a pay of Rs.2400/- plus other allowances per month, the applicants receive only Rs.1000/- (fixed) per month. The applicants claim that they are entitled to equal pay for equal work and this is being denied to them by the Management of the Maulana Azad Medical College. In other words, the applicants claim that since they do the same type of work and carry the same type of responsibilities as that of Dr.Vishruti Bagga and Dr.Ajay Gupta, Jr. Residents (Dental) in the Lok Nayak Jai Prakash Narayan Hospital, the Maulana Azad Medical College is practicing discrimination in the matter of pay and emoluments of the applicants and they are entitled to the same pay and emoluments as the two Residents Doctors are getting. They have, therefore, prayed:

(a) to quash and set aside office order (Part II) No.2055 dated 1.10.1987, Office order (Part II) No.2240 dated 4.11.1987 and Office order (Part II) No.1017 dated 6.4.1988 issued by the respondent No.1 to the extent that they provide for payment of Rs.1000/- p.m. each to the applicants as fixed pay for working as Junior Residents;

(b) to direct the respondents to treat the applicants at par with other Junior Residents of Lok Nayak Jai Prakash Narayan Hospital for the purposes of pay and allowances as well, and to pay to the applicants the difference of the salary they have already worked as Junior Residents; and

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(c) to direct the respondents to pay to the applicants the same pay hereinafter, which is being paid to other Junior Residents of Lok Nayak Jai Prakash Narayan Hospital.

Before we advert to the questions raised in the arguments and the replies thereto, it will be necessary to state some undisputed facts.

In the Union Territory of Delhi, there are several hospitals and medical colleges, one of which known as 'Maulana Azad Medical College (in short 'MAMC') and Associated Hospitals complex consisting of four integral units, viz., the College, Lok Nayak Jai Prakash Narayan Hospital, (in short 'LNJP Hospital', Gobind Ballabh Pant Hospital (in short, 'GBP Hospital') and Guru Nanak Eye Centre. The well-known Irwin Hospital has been renamed as Lok Nayak Jai Prakash Narayan Hospital. It is one of the biggest hospital in Delhi. The GBP Hospital was added in 1964 to provide training facilities in super specialities. In 1983, a Dental Wing was added to the MAMC.

It is also undisputed that the medical course (MBBS) is for a period of $4\frac{1}{2}$ years plus 1 year's internship. The B.D.S. Course when started was for a period of 4 years only. There was no internship then. In 1985, a provision was made that all those who complete the 4 years term for BDS from 1989 onwards study/have to do a year's internship before they get the Degree of B.D.S. It is also not in dispute that some Junior Residents (Dental) were appointed by the College to work at a fixed pay of Rs.1000/- per month. All those who had been

appointed as Junior Residents (Dental) were examined and found qualified for the Degree of B.D.S. They were not doing any internship at the time when they were appointed. They were fully qualified Dental Surgeons.

It is also not in dispute that Dr. Vishruti Bagga and Dr. Ajay Gupta were also appointed Junior Residents (Dental) by different orders in the LNJPN Hospital. The former was appointed by order dated 7.5.1987 from 9.2.1987 to 31.12.1987. The order appointing them indicated that 5 persons appointed to the post of Junior Resident (Ist Year) in various specialities for the period shown against each name were to be paid Rs.2400/- per month (inclusive of all allowances including NPA). They were also to be paid C.C.A. admissible under the rules and also D.A. on 90% of the remuneration. Dr. Ajay Gupta was similarly appointed by order dated 4.8.1987 on the same term as Junior Resident (Ist Year) from 1.7.1987 to 31.12.1987. The other appointees in the orders dated 7.5.1987 and 4.8.1987 were persons who had qualified and obtained MBBS Degrees and had been appointed as Junior Residents in Medicine, General Surgery, Orthopaedic, Burns & Plastic, Obstetrics and Gynaecology Sections.

There is also no dispute that 11 applicants in O.A.1163/88 were appointed as Junior Residents with effect from 28.9.1987 to 29.2.1988 by Office Order (Part II) No.2055 dated 1.10.1987 and applicants Nos.12 and 13 were appointed as Junior Residents (Dental) vide Office Order No.2240 dated 4.11.1987 in the

Dental Wing of MAMC. The orders indicated that they were to be paid @ Rs.1000/- per month (fixed) per head. By another Office Order dated 6.4.1988, their term was extended from 1.4.1988 to 30.9.1988.

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In O.A. 645/1989, by an Office Order dated 9.8.1988 (Annexure X-4), 7 of the applicants No.2, 4, 5, 7, 8, 9 and 10 were appointed on the recommendations of the selection committee as Junior Residents with effect from 8.8.1988 to 7.8.1989 in the Dental Wing of the College. They were to be paid Rs.1000/- per month (fixed) per head. By another similar Office Order (Annexure X-5), applicants Nos. 1, 3, 6 and 11 were appointed from 17.9.1988 to 16.9.1989 and the last applicant No.13, Shri Mathai Thomas from 1.10.1988 to 30.9.1989.

There is also no dispute to the fact that the Government of India, Ministry of Health and Family Welfare on 5.12.1986, issued a Residency scheme, whereby a revision of emoluments of Junior and Senior Residents was declared. The Junior Residents would be paid Rs.2400 in the first year, Rs.2475 in the second year and Rs.2550/- in the third year of their residency respectively. They were also to get CCA, H.R.A. and D.A. on 90% of the remuneration. Earlier they were getting only Rs.1000/- p.m.

The applicants have stated that they were given assurance, at the time of appointment that they would be put at par with other Junior Residents of the LNJPN Hospital and they would get the same emoluments, as were being paid to other Junior Residents. On September 22, 1987 they made a representation in this regard. It was forwarded by Dr.D.S.Agarwal, Dean, MAMC, New Delhi to the Secretary (Medical), Delhi Administration. It was received

and entered at Serial No.4700 on 24th September, 1987.

A reminder was sent on 2nd February, 1988. The applicants have further stated that applicants 1 to 10 joined the post of Junior Residents of MAMC, Dental Wing on 29th September, 1987 under protest and without prejudice to their right of 'equal pay for equal work'. No order, either accepting or rejecting their representation has been passed by the Union of India or the Delhi Administration. Only the term of their residency had been extended. The applicants, after a long wait filed the Original Applications No.1163/88 and 645/ 1989 before this Tribunal on 14.6.1988 and 29.3.1989.

There is no dispute that all the applicants are at present working as Junior Residents (Dental) in the MAMC, New Delhi. Apart from, Dr. Vishruti Bagga and Dr. Ajay Gupta who have also B.D.S. Degree and are working as Junior Residents in the LNJPN Hospital, another doctor by the name of Satish Garg is also working as a Junior Resident in the Guru Teg Bahadur Hospital, Shahdara at the scale of Rs. 2400/- plus D.A., H.R.A. C.C.A. etc.

On behalf of the applicants, Shri V.S.Madaan, submitted that the rule of 'equal pay for equal work' has not been applied in the case of the applicants in these two Original Applications. The applicants are all qualified Medical Practitioners in Dentistry, they have obtained their B.D.S. Degrees in 1987 and 1988. They have been appointed as Junior Residents (Dental) at a fixed salary of Rs.1000/- per month whereas similarly qualified Dental Surgeons with BDS Degree have been appointed Junior Residents (Dental) in the LNJPN Hospital and Guru Teg Bahadur Hospital at a higher pay of Rs.2400/- plus other allowances per month, when there is no distinction between the type of work the applicants do and those appointed in the LNJPN Hospital and Guru Teg Bahadur Hospital. Their responsibilities are the same. Being Dental Surgeons having BDS Degrees, they are not called upon to lookafter any other patient in these three Hospitals except the patients who come for oral and dental treatment or surgery. Learned counsel for the applicants contended that it is a well established principle that persons similarly placed and doing similar work should be paid similarly. In the present case, he contended, this had not been done and there was thus a violation of Article 14 of the Constitution.

Shri J.S. Bali, learned counsel for the respondents contended that the applicants were not entitled to the same scale as that of other Junior Residents in the Hospitals. They did not perform the same type of work and their responsi-

bilities differed. The pay scale of Rs.2400/- per month was meant exclusively for persons who had been examined and found qualified for the degree of MBBS and who were undergoing a Post Graduate course in the Medical College. The applicants were not seeking any Post Graduate qualification, for there was no course of M.D.S. in the College and as such, Junior Residents (Dental) were not entitled the same pay scale as that of Junior Residents in the Hospital. In regard to Dr. Vishruti Bagga and Dr. Ajay Gupta, the learned counsel stated that giving them pay scale of Rs.2400/- per month was a mistake and advantage of the same could not be taken by the applicants. Further, the appointing authority for the applicants was the Dean of the MAM College was different from the Medical Superintendent of the Hospital in the LNJPN. They were separate organisations and their appointing authorities were different, consequently, any pay scale granted by the LNJPN Hospital could not be cited as an act of discrimination by the applicants who were appointed by the Dean of the College. He further contended that the applicants were acting as Interns and their pay scale was Rs.1000/- per month (fixed) in every Medical College and Hospital attached thereto in Delhi. Their nomenclature as Junior Resident could not entitle them to a better status than that of intern. In any event, the applicants had accepted the appointment which carried an emolument of Rs.1000/- only and it was not open to them to question the same. Lastly, it was urged that the Government or the appointing authority is the sole

judge of determining as to what the pay scale would be for a particular post and this could not be questioned by the applicants. In support of his contention, Shri J.S. Bali referred to a decision of the Supreme Court in the case of MEWA RAM KANOJIA Vs. ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ORS. (ATR 1982(2) S.C. 17). A contention had been raised in the above case that Speech Therapists have been granted higher scale of pay in other Institutions, viz., Rohtak Medical College National Institute for Hearing Handicapped, Hyderabad, Safdarjan Hospital, and P.G.I. Chandigarh cannot be taken into consideration as the petitioner has failed to place any material showing the duties and functions performed by the Speech Therapists in the aforesaid Institutions or the qualifications prescribed for the same. He also stated this case for the proposition that if the employer is not the same, the principle of equal pay for equal work would not be applicable. The plea of Kanojia was dismissed by the Supreme Court on the ground that the petitioner had not placed requisite material before the Court for application of the principle of 'Equal Pay for Equal Work'. Learned counsel for the respondents had also referred to a decision in the case of UMESH CHANDRA GUPTA AND OTHERS. Vs. OIL AND NATURAL GAS COMMISSION AND ORS. (AIR 1989 SC 29) where the Supreme Court observed:

"If the management for good reasons have classified the posts into two categories with different pay scales, the Courts generally must accept unless it is demonstrated that it is patently erroneous either in law or on fact."

We have heard learned counsel for the parties and considered the case law as well. We may refer to the law of 'Equal Pay for Equal Work'. This principle is not a new one. It has been considered in the case of RANDHIR SINGH Vs. UNION OF INDIA (AIR 1982 SC 879). Chinnappa Reddy, J. observed:

"It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Art.39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy..... These equality clauses of the Constitution must mean something to every one. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay."

The learned Judge, however, observed that a differential treatment in appropriate cases can be justified when there are two grades based on reasonable grounds:

"It is well known that there can be and there are different grades in a service, with varying qualification for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Art.14 if sought to be applied to them."

A catena of cases follows the principle enunciated in PANDHIR SINGH's case, (supra). It followed in RAMCHANDRA Vs UNION OF INDIA (AIR 1984 SC 541), P.SAVITA Vs. UNION OF INDIA (AIR 1985 SC 1124), and SURINDER SINGH Vs. ENGINEER-IN-CHIEF, CP.W.D. (AIR 1986 SC 574). In Surinder Singh's case, daily wage workers employed for several years by the CPWD came up for consideration before the Supreme Court. The workers demanded parity in their wages, salary and allowances with those of regular and permanent employees of the Department on the basis of performing similar work. A series of cases have been decided by their Lordships of the Supreme Court and the latest in the series of the cases is the case of STATE OF U.P. AND OTHERS Vs. J.P. CHAURASIA AND OTHERS (AIR 1989 SC 19) where all these cases have been taken into consideration. One of the questions posed by the Supreme Court in the above judgment was whether there can be two scales of pay in the same cadre of persons performing the same or similar work or duties. This passage has also been referred to in the case of TARSEM LAL GAUTAM AND ANOTHER Vs. STATE BANK OF PATTIALA AND OTHERS (AIR 1989 SC 30).

In the case of J.P. CHAURASIA (supra), their Lordships were considering the formation of two grades amongst the Bench Secretaries in the High Court at Allahabad. Under the rules framed by the Chief Justice of the High Court, Bench Secretaries Grade I are selected by a Selection Committee. Their selection is based on merit with due regard to seniority. They are

from selected amongst the lot of Bench Secretaries Grade II.

When Bench Secretaries Grade II acquire experience and also display more merit, they are appointed as Bench Secretaries Grade I. The rules thus make a proper classification for the purpose of entitlement to higher pay scale. Their Lordships observed:

"The classification made under the Rules, therefore, cannot be said to be violative of the right to have equal pay for equal work."

In the present case, there is no challenge to the educational and professional qualification and experience of Dr. Vishruti Bagga and Dr. Ajay Gupta on one hand with that of the applicants. There is nothing concrete to show that both the Jr. Residents in LNJPN Hospital were doing any other work or any further work or any different work than those performed by the applicants in the MAM College. Both had done four years Course of BDS, were examined and conferred degree of BDS. They were all working as Junior Residents (Dental Wing). We, therefore, do not find any reasonable basis of classification in the services of Dr. Vishruti Bagga and Dr. Ajay Gupta on one hand and the applicants on the other. They are in the same cadre doing the same work and had similar responsibilities yet they were being paid differently.

We may record here that the respondents effort was to show that the scale of Rs.2400/- for Junior Residents in the Medical Colleges and hospitals connected therewith were

being paid to doctors who have MBBS degrees and who perform a variety of work in the hospital as Junior Residents. For our purpose it is not necessary to go into the question what justified the payment of Rs.2400, Rs.2475 and Rs.2550 to Junior Residents having MBBS qualification. We are in the present case concerned with a simple matter, viz. that of the two BDS qualified doctors who were appointed as Junior Residents and yet paid @ Rs.2400/- P.M. (inclusive of all allowances including NPA) plus CCA admissible under the rules and also DA on 90% of the remuneration, whereas their counterparts who were similarly qualified, doing similar work were being paid Rs.1000/- per month (fixed). We think, that the present case is one of those cases where the principle of 'equal pay for equal work' applies with full force. We do not find any reasonable ground to disallow the application of the rule. As a matter of fact, it is a glaring case of discrimination.

Learned counsel for the respondents has stated that he appears for respondent No.1, viz., the Dean, MAMC, and not for other respondents and he is not aware of the circumstances under which the Medical Superintendent of the LNJPN Hospital allowed a different and higher scale of pay to Dr.Bagga and Dr.Gupta, who were appointed as Junior Residents in that Hospital. He has, however, not denied that the work and responsibilities of the applicants are in any way different than those of Dr. Bagga and Dr. Gupta.

We may also refer to the contention raised by the learned counsel for the respondents that the MAM College,

GBP Hospital and LNJPN Hospital were all separate and distinct organisations and one had nothing to do with the other. This contention has to be rejected as the 31st College Report 1983 published by the Maulana Azad Medical College and Associated Hospitals in the opening lines of the Annual Report recorded:

"Maulana Azad Medical College and Associated Hospitals complex consisting of four integral units, viz., the College, Lok Nayak Jaya Prakash Narayan Hospital (Irwin Hospital), Gobind Ballabh Pant Hospital and Guru Nanak Eye Centre was funded in 1958".

It is undisputed that the MAMC and these hospitals are run by the Delhi Administration. The appointing authorities may be different but they are all run by the Delhi Administration, and as such, it cannot be urged that the employer is not the same. We may refer to a letter dated 9th September, 1987 filed along with the counter filed by Dr.D.S. Agarwal, Dean of MAMC in OA 1163/1988, which shows that 20 posts of Junior Residents in MAMC were sanctioned by the Delhi Administration. We are, therefore, not impressed by this line of argument. The contention is rejected.

We may also refer to another argument raised on behalf of the respondents that the applicants' appointment and work was akin to interns as in the MBBS course. Dr. D.S. Agarwal's reply in OA 1163/1988 says "MAMC decided to create this post in order to give full practical training to the B.D.S. graduates, on the analogy of M.B.B.S. students who after passing M.B.B.S. are

appointed compulsorily as Interns for one year under the instructions of the Medical Council of India." This contention has also no substance. The M.B.B.S. course is for a duration of $4\frac{1}{2}$ years followed by a year of internship after which the degree of MBBS is granted to those who qualify the written and practical examination. The course for B.D.S. on the other hand was for a duration of 4 years only upto 1988 and there was also no scheme for having interns in the case of Dental Surgeons who passed the BDS examination till 1988. The internship scheme became applicable in terms of Dental Council of India's letter No. DE-1-84/5941 dated 15th March, 1985, specifying that the provisions of undergoing internship should be applicable to Final Year BDS students who will qualify in 1989 and onwards. The applicants received BDS Degree in 1987 and 1988 became fully qualified Dental Surgeons and to treat them as interns would not be correct. The applicants were not paid any stipend, but regular salary. The Dental Council of India have made internship for a year compulsory to obtain from 1989 onwards. the Degree of B.D.S. That is not applicable to the present Junior Residents who are already entitled to practice dentistry. They rightly allege that they do not require any internship, for they have got their degree of B.D.S. They are doing the work of Junior Residents for it is a pre-requisite condition to obtain Government service or to go in for a Post Graduate qualification. Consequently, the argument that the applicants were interns or doing something akin to internship is wholly untenable. We reject the same.

If the grant of a higher scale to Dr. Vishruti Bagga and Dr. Ajay Gupta was a mistake, then we have seen no evidence of any effort made by the respondents to rectify the mistake. Once the administration had granted a higher scale to similarly qualified persons with similar experience and performing the same type of work, there is no justification to deny the same scale of pay for the applicants who were doing exactly the same nature of work and had similar qualifications and responsibilities.

Having considered the matter and for the reasons indicated above, we are of the view that the applicants have been able to make out a case of the applicability of principle of 'equal pay for equal work' and as such, we allow both the Applications and grant the reliefs prayed for by quashing Office Order No.2055 dated 1.10.1987, Office Order No.2240 dated 4.11.1987 (OA 1163/88) and Office Order No.2117 dated 9.8.1988 (Annexure X-4) and (Annexure X-5) (OA 645/1989) issued by respondent No.1 to the extent that they provide for payment of Rs.1000/- p.m. each to the applicants as fixed pay for working as Junior Residents. We further direct that all the applicants are entitled to receive and be paid the same scale of pay plus other allowances as have been granted in the case of Dr. Vishruti Bagga and Dr. Ajay Gupta employed as Junior Residents in the Lok Nayak Jai Prakash Narayan Hospital

from the respective dates of their original appointment.

In the circumstances of the case, we direct the parties to bear their own costs.

B.C. Mathur

(B.C. Mathur)
Vice-Chairman
28.9.1989.

(AB)

(Amitav Banerji)
Chairman
28.9.1989.

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