

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 320/86 198 6
T.A. No.

DATE OF DECISION 13.7.1988

Shri S.K. Ghuliani

Petitioner

Applicant in person

Advocate for the Petitioner(s)

Versus

Ministry of External Affairs,
Government of India. Respondent

Shri N.S. Mehta

Advocate for the Respondent(s)

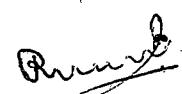
CORAM :

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

The Hon'ble Mr. S.P. Mukerji, 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


(S.P. Mukerji)
Administrative Member


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

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-320/86

Date: 13.7.1988

Shri S. K. Ghuliani Applicant

Versus

Ministry of External Affairs, Govt. of India Respondents

For the Applicant Applicant in person

For the Respondents Shri N. S. Mehta, Advocate.

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

(Judgement of the Bench delivered by Hon'ble
Shri P. K. Kartha, Vice-Chairman)

The applicant, who was working as an Assistant
Editor in the Pakistan Division of the Ministry of
External Affairs, filed this application under Section
19 of the Administrative Tribunals Act, 1985, seeking
the following reliefs:-

pay of Rs. 1100

- (a) Grant of the scale of Rs. 700-1300 w.e.f.
15.9.1975.
- (b) To direct the respondents to place him in
the pay-scale of Rs. 1100-1600 with immediate
effect.
- (c) Grant of suitable financial compensation for
the emotional distress undergone by him.

2. The applicant was appointed as a Sub-Editor in
the scale of Rs. 470-750 (Class II non-gazetted) in the
Assistant High Commission of India, Karachi, in April,
1968. In December, 1971, his services were transferred
to the headquarters of the Ministry of External Affairs
in New Delhi, where he is presently working.

3. The applicant has contended that he became eligible for promotion to the next higher grade of Assistant Information Officer in April, 1971 when a vacancy arose but his case was not processed and he was not given promotion.

4. On 23.9.1974, the respondents revived the post of Assistant Information Officer located in the Ministry of External Affairs w.e.f. the date the post was filled. Simultaneously, it was ordered that the post of a Sub-Editor located in the same Ministry will be held in abeyance.

5. On 21.3.1975, the respondents issued another sanction letter whereby the revived post was redesignated as Assistant Editor with the pay-scale of Rs.550-900 and simultaneously the post of Sub-Editor was ordered to be held in abeyance, until further orders.

6. On 26.7.1976, the pay-scale of the post of Assistant Editor was revised from Rs.550-900 to 650-1040.

7. The applicant has contended that the decision to grant a lower pay-scale of Rs.650-1040 by downgrading the post of Assistant Information Officer which was in the ^{and by} pay-scale of Rs.650-1200, which was his next scale of promotion, was arbitrary, unjust and mala fide. He has alleged that the pay-scale of Rs.650-1040 was lower than those of his counterparts in other departments, such as the Ministry of Law, Justice & Company Affairs, the Department of Culture(Gazetteer Unit), Planning Commission, Publication Department of the Govt. of India, P.I.B., Directorate of Audio-Visual Publicity, All India Radio,

I.C.A.R., and Ministry of Defence and that this amounts to violation of Articles 14 and 16 of the Constitution. He has further alleged that his job requirements and functions are more onerous and vigorous and of higher responsibility than those of his counterparts in other departments, especially when posted in Indian Missions and posts abroad. According to him, his work being higher in responsibility, it is comparable and equivalent in importance and responsibility in nature as those of Information Officers/Under Secretaries who are in the pay-scale of Rs.1100-1600 and Rs.1200-1600, respectively.

8. The applicant has submitted numerous representations from 1976 onwards with no success.

9. The respondents have contended ~~that~~ in their counter-affidavit that the decision to grant a lower scale was taken keeping in view the financial constraints imposed by the Government vide the letter of the Ministry of Finance dated 15.4.1974. In letter of the Ministry of Finance dated 15.4.1974 ~~had~~ ^{they had} as a measure for effecting economy in non-planned Expenditure, decided, inter alia, that there should be ban on filling up of posts remaining unfilled for more than six months. Keeping in view the financial constraints, the respondents decided to attach a lower pay-scale to the revived post of Assistant Information Officer. The lower pay-scale was worked out ~~by~~ by taking into account the relevant savings in other posts which were to be kept in abeyance on the revival of this post. The respondents have contended that the sanction letter dated 23.9.1974 did not mention that the post had been revived with the pay-scale of Rs.650-

1200. They have produced a photocopy of the said letter to substantiate this. The applicant also has produced a photocopy of the same sanction letter as Annexure P-12 wherein the scale of the post has been interpolated in ink by someone.

10. The respondents have pointed out that it was not possible to place the applicant in the scale of Rs.650-1200 as the post of Assistant Editor was not functionally similar to the post of Administrative Officer - the post against which the post of Assistant Editor was to be utilised and had, therefore, to be downgraded. The applicant was originally appointed as Assistant Editor in an ex cadre post on ad hoc basis purely due to functional necessity.

11. As regards the claim of the applicant for the grant of pay-scale of Rs.1200-1600, the respondents have contended that the said pay-scale is given to I.F.S.(B) Officers promoted to the grade of Under Secretary through a selection process involving the U.P:S.C. The applicant was only a permanent Lower Division Clerk and was approved for promotion to the post of Assistant on ad hoc basis only in 1975. He was not, however, appointed as Assistant as he was holding the ex cadre post of Assistant Editor. Had he been promoted to the post of Assistant in 1975, he ^{should} have been promoted to the next higher grade of Section Officer only after putting in at least 10-12 years of service, depending on the availability of posts. In view of this, the applicant had been a gainer by having been appointed in the ex cadre post.

of Sub-Editor in the scale of Rs.470-750 and thereafter, as Assistant Editor in the scale of Rs.650-1040.

12. As regards the claim for granting the applicant the scale of Rs.700-1300, the respondents have stated that the duties and responsibilities of officials who work in different departments are considerably different, especially in respect of isolated or ex cadre posts.

13. As to the claim for grant of financial compensation, the respondents have pointed out that the applicant had been granted a much higher scale in the present post than to what he would have been eligible had he remained in the regular cadre. Therefore, the question of grant of any financial compensation does not arise.

14. The respondents are also relying on a note dated 23.8.1976 submitted by the applicant to the respondents which reads as follows:-

"I was promoted as Assistant Editor from 15th Sep., 75 in the scale of Rs.550-900 which was subsequently revised to Rs.650-1040 with effect from 12th May, 1976. I shall, therefore, be grateful if the following action is taken on urgent basis:-

- i) to fix my pay in the scale of Rs.550-900 from 15.9.75 to 11.5.76;
- ii) to issue orders for the grant of the scale of Rs.650-1040 with effect from 12th May, 1976.

ay
2. I was drawing Rs.610/- as my basic pay at the time of my promotion in the scale of Rs.470-750 as Sub-Editor."

15. It is clear from the above note submitted by the applicant to the respondents that one of his requests was to fix his pay in the scale of Rs.550-900 from 15.9.1975 to 11.5.1976 as he was drawing Rs.610/- as basic pay at the time of his promotion as Assistant Editor. The second request was to grant him the scale of Rs.650-1040

w.e.f. 12th May, 1976 after a decision was taken to revise the scale of pay from Rs.550-900 to Rs.650-1040 from 12.5.1976. To our mind, both these requests appear to be quite reasonable.

16. We have carefully gone through the records and heard the applicant and the learned counsel for the respondents. The contention of the applicant that his counterparts in other departments have been placed in higher pay-scales and, therefore, he should also be given higher pay-scale, cannot be accepted unless the duties and responsibilities of the posts, the qualifications prescribed, the mode of selection, etc., are identical.

17. In State of Punjab vs. Joginder Singh, A.I.R. 1963 S.C. 913 at 921, a Constitution Bench of the Supreme Court has observed that the State can constitute two services consisting of employees doing the same work but with different scales of pay or subject to different conditions of service and that the constitution of such Services will not be violative of Article 14.

18. In Ganesh Vithoba Kulmeti & Others vs. State of Maharashtra, 1980 SLJ 531, the Bombay High Court following the decision in Joginder Singh's case, has held that the Laboratory Attendants in the ^Q_{or} ^Q Public Health department, cannot claim the same pay-scale as that of Laboratory Attendants in the Education Department as they belong to different services.

19. In Randhir Singh vs. Union of India & Others, 1982(1) S.C.C. 618, ^Q_{or} the Supreme Court has considered the amplitude of the doctrine of 'equal pay for equal work'. In that case, the question arose whether the Drivers in the Delhi Police Force would be entitled to the same scale of pay as that of

other Drivers in the service of the Delhi Administration. There were two scales of pay of Driver-Constables in the Delhi Police Force, viz., 210-270 in the case of non-matriculates and Rs.225-308 in the case of matriculates. The scale of pay of a Driver in the Railway Protection Force is Rs.260-400. The scale of pay of Drivers in the non-secretariat offices in Delhi is Rs.260-350. The scale of pay of Drivers in the secretariat offices in Delhi is Rs.260-400. The scale of pay of Drivers in the Office of the Language Commission is Rs.260-350. The pay-scale of Drivers of heavy vehicles in the Fire Brigade and the Department of Light^WHouse is Rs.330-450. The applicant contended that he discharged the same duties as the rest of the Drivers in other offices. He even claimed that he discharged more onerous duties than the others. The contention of the respondents was that there can be no comparison between different departments of the Government of India for the purpose of fixation of pay-scales. A pay-scale has been fixed upon consideration of various factors. The pay-scale of the Drivers of the Delhi Police has been fixed after duly considering all the circumstances. The Drivers in other departments are not similarly situated as the applicant and there is no question of any hostile discrimination.

20. The Supreme Court observed that the counter-affidavit did not explain how the case of the Drivers in the Police Force is different from that of the Drivers in other departments and what special factors weighed in fixing a lower scale of pay for them. The court did not accept the view that the fact that persons belong to different departments

of the Government, is itself a sufficient circumstance to justify different scales of pay, irrespective of the identity of their powers, duties and responsibilities. If this view is to be stretched to its logical conclusion, the scales of pay of officers of the same rank in the Government of India may vary from department to department notwithstanding that their powers, duties and responsibilities are identical. In this context, it was observed that where all things are equal, i.e., where relevant considerations are the same, persons holding identical posts, may not be treated differently in the matter of their pay merely because they belong to different departments. The court, however, added : "Of course, if officers of the same rank ^{or} ~~or~~ ^{do} perform ~~the~~ similar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complaint of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same."

21. In their earlier decision in Kishori Mohan Lal Bakshi Vs. Union of India, A.I.R. 1962 S.C. 1139, the Supreme Court had described the principle of 'equal pay for equal work' as an abstract doctrine which had nothing to do with Article 14. In Randhir Singh's case, the Supreme Court observed that the principle of 'equal pay for equal work' is not an abstract doctrine but one of substance. It was observed that what was decided in Kishori Mohan Lal Bakshi's case, was that there could be different scales of pay for different grades of a service. In that case, it was contended 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 court observed that if this contention had any validity, there could be no incremental scales of pay fixed, depending on the duration of an officer's service.

The court also noted that under the rules, Income Tax Officers of Class I were eligible for appointment as Assistant Commissioner but those of Class II, were only eligible for promotion as Income Tax Officers Class I but not for promotion to the post of Assistant Commissioner.

In this context, it was observed that between citizens holding posts in different ~~courts~~ ^{grades} in Government service, there can be no question of equality of opportunity.

22. In Randhir Singh's case, the Supreme Court distinguished its earlier decision in Kishori Mohan Lal Bakshi's case, by observing that there can be and there are different ~~grades~~ ^{grades} in a service with varying qualifications for entry into a particular grade. The higher grade may often be a promotional avenue for officers of the lower grade. The classification between the officers in the two grades with different scales of pay, is reasonable, having regard to the higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service. In such a case, the principle of 'equal pay for equal work' would not apply.

23. The duties performed by the Drivers in two Government departments ^{are} ~~may be~~ qualitatively similar but the same analogy cannot be extended to several other posts in Government service. The ~~discrimination~~ ^{nomenclature} of the post by itself will not be the deciding factor. One has to look into the nature of the duties attached to the post, the qualifications and experience prescribed and the like. For example, the

duties performed by an Assistant Editor posted say in a Ministry concerned with Science or Technology and thus dealing with highly technical scientific material, cannot be compared at par with those of an Assistant Editor dealing with children's education in another Ministry, although both are Assistant Editors. In the instant case, the applicant has not placed before us any material to substantiate his claim that the level of the duties and responsibilities of the post of Assistant Editor with higher pay-scale in other departments is qualitatively the same as that of the Assistant Editor, to which post he was appointed. He thus cannot claim parity on the score of designation alone.

24. In Dr. (Miss) Q.Z. Hussain Vs. Secretary, Ministry of Health & Family Welfare, New Delhi, ATR 1987(2) 160, this Tribunal has held that merely because the posts carry the same nomenclature, the incumbents are not entitled to the same scale of pay. The Tribunal considered the ruling in Randhir Singh's case.

25. In the light of the above, the prayer of the applicant for the grant of the scale of Rs.650-1200 or any other higher scale to the post of Assistant Editor is not legally tenable. He will be only entitled to the scale of pay of Rs.650-1040 which he himself had asked for on 23.8.1976 (para.14 supra). However, as he had worked in the post of Assistant Editor from 15th September, 1975, it will be fair and just to give him the benefit of the revised scale of pay of Rs.650-1040 from the same date. The difference in pay and allowances drawn by him and to be calculated in the same manner as mentioned above, should be paid to him within a period of two months from the date of the communication of this order, if this has not already been done.

26. The application is allowed to the extent mentioned above with no order as to costs.

S.P. Mukerji
(S.P. Mukerji)
Administrative Member
13.7.88

P.K. Kartha
(P.K. Kartha)
Vice-Chairman (Judl.)
13.7.88