

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 596 / 1986.
~~F.A. No.~~

DATE OF DECISION March 13, 1987.

Dr. (Miss) Q. Z. Hussain Petitioner

Shri Manoj Prasad Advocate for the Petitioner(s)

Versus

Secretary, Ministry of Health & Family Welfare, New Delhi & Others. Respondent

Shri M. L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Kaushal Kumar, Member (A).

The Hon'ble Mr. G. Sreedharan Nair, Member (J).

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 to be circulated to other Benches? *Yes*

80-12-3-1987
(G. SREEDHARAN NAIR)
MEMBER (J)
13.3.1987.

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(KAUSHAL KUMAR)
MEMBER (A)
13.3.1987.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 596/1986.

DATE OF DECISION: March 13, 1987.

Dr. (Miss) Q.Z. Hussain Applicant.

V/s.

Secretary, Ministry of
Health & Family Welfare,
New Delhi & Others. Respondents.

For the applicant Shri Manoj Prasad,
Advocate.

For the respondents Shri M.L. Verma,
Advocate.

CORAM: Hon'ble Mr. Kaushal Kumar, Member (A).
Hon'ble Mr. G. Sreedharan Nair, Member (J).

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member.)

JUDGMENT

In this case, the grievance of the applicant, who is a Deputy Director and Head of the Bio-Chemistry Division in the National Institute of Communicable Diseases, Delhi, is that she has been denied the pay scale of Rs.1800-2250 which is the existing pay scale of five other Deputy Directors in the same Institute. She has also prayed for fixation of her seniority qua other Deputy Directors working in the Institute on the basis of length of service.

2. The applicant joined the National Institute of Communicable Diseases as Deputy Director (Bio-chemistry) on 30th October, 1973. The N.I.C.D. is a subordinate wing of the Directorate General of Health Services and functions under the overall control of the Ministry of Health and Family Welfare, Government of India. At the time when the applicant joined, there were eight posts of Deputy Director in the N.I.C.D. While the post of Deputy Director in the speciality of Bio-chemistry to which the applicant was appointed and that of Entomology carried the pay scale of Rs.1300-1600, the pay scale attached to the

posts of Deputy Director in the specialities of Epidemiology, Filariasis (now called Helminthology), Zoonosis, Microbiology, Polio Vaccine Testing and Training-Administration (now called Training and Malariology) carried the pay scale of Rs.1300-1800. On the recommendation of the Third Pay Commission, the pay scale of Deputy Directors in the specialities of Biochemistry (non-medical), Medical Entomology & Vector Control (non-medical), Epidemiology (Medical), Filariasis (now called Helminthology (Medical), and Training & Malariology (Medical) were revised to Rs.1500-2000 and those in the specialities of Polio Vaccine Testing (Medical), Microbiology (Medical) and Zoonosis (Medical) were revised to Rs.1800-2250. In November, 1982, the pay scales of Deputy Director (Helminthology) and Deputy Director (Epidemiology) were also raised from Rs.1500-2000 to Rs.1800-2250. In the result, the position as emerges on date is that whereas five posts of Deputy Director on the Medical side carry the pay scale of Rs.1800-2250, one post on the Medical side viz. that of Deputy Director (Training & Malariology) and two posts on the non-medical side namely those of Deputy Director in the specialities of Biochemistry and Entomology carry the pay scale of Rs.1500-2000. The case of the applicant is that the non-upgrading of the pay scale of the aforesaid three Deputy Directors is highly discriminatory and violative of the principle of Equality as envisaged by Article 39(d) of the Constitution of India and is also violative of Article 14 of the Constitution. According to the applicant, the nature of duties and responsibilities and work of all the Deputy Directors in the N.I.C.D. were of an identical nature and equally responsible and exacting and as such, there can be no justification for discrimination in their pay scales.

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3. The case of the respondents is that there are separate Recruitment Rules and qualifications prescribed for different posts of Deputy Director in the N.I.C.D. All of them do not belong to a common cadre. There are certain Divisions which can only be manned by Medical personnel like Epidemiology Division, Helminthology Division, Microbiology Division, Zoonosis Division and Training & Malariology Division.

4. We have carefully considered the contentions made from both sides and find no justification for holding that the applicant, who is holding the post of Deputy Director (Biochemistry) - non-medical, can be treated as performing functions identical to those Deputy Directors who are on the medical side. The recruitment rules for the post of Deputy Director (Biochemistry) were notified by the Ministry of Health & Family Planning vide Notification G.S.R. 243 dated 30.1.1976 published in the Gazette of India, Part II Section 3(i), dated February 21, 1976. The rules notified were called "the National Institute of Communicable Diseases, National Filariæ Control Programme and National Malaria Eradiction Programme (Class I and Class II, Non-medical, Gazetted posts) Recruitment Rules, 1976". The age limit and essential qualifications for recruitment to the post of Deputy Director (Biochemistry) were indicated as under: -

Age limit for direct recruits.

Not exceeding 45 years (Relaxable for Government servants).

Educational and other qualifications required for direct recruits.

- (i) Doctorate in Biochemistry.
- (ii) 12 years experience in the profession with extensive teaching and/or Research experience in Biochemistry.

(Qualifications relaxable at Union Public Service Commission's discretion in case of candidates otherwise well qualified.)

Similar qualifications have also been prescribed for direct recruits in the case of Deputy Director (Entomology). On the other hand, the posts of Deputy Director on the Medical side were encadred in the Central Health Service Rules, 1982, published in the Gazette of India Extraordinary in Part II Section 3(i) by the Ministry of Health and Family Welfare vide G.S.R. 689(E), dated 11th November, 1982. The posts of Deputy Director in the specialities of Microbiology, Zoonosis, Epidemiology and Filariasis Divisions were included in the cadre of the Central Health Service (Non-teaching Specialist Sub-Cadre Specialist Grade I - Rs.1800-2250 as per Schedule I attached with the Notification dated 11th November, 1982, referred to above. The age and educational and other qualifications prescribed are as under: -

<u>Age</u>	<u>Educational and other qualifications required</u>
Not exceeding 50 years. (Relaxable for Government servants) by 5 years in accordance with the instructions issued by the Central Government)	(i) A recognised medical qualification included in the First or Second Schedule or Part II of the Third Schedule (other than licentiate qualifications) to the Indian Medical Council Act, 1956. Holders of educational qualifications included in part II of the Third Schedule should also fulfil the conditions stipulated in sub-section (3) of the Section 13 of the Indian Medical Council Act, 1956. (ii) Post-graduate degree/diploma in the required area of Public Health mentioned in Schedule VI or equivalent. (iii) 12 years' standing in the profession out of which 8 years work should be in a responsible position connected with Public Health. (iv) Extensive practical and administrative experience.

It will be seen from the above that the educational qualifications and age etc. prescribed for the post held by the applicant are different from those attached to the post of Deputy Director on the Medical side with which

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the applicant claims parity in the matter of pay scale. These posts also belong to a different cadre and are governed by a different set of recruitment rules. It cannot be accepted that the nature of duties of all the Deputy Directors whether Medical or Non-medical is the same or identical. ~~In this case~~, Non-medical scientists from one category of personnel cannot be equated with Medical scientists from another category of personnel. According to the principle of equality, all alike are to be treated alike, and when equals are treated as equals, there can be no discrimination. In respect of classification, the unequals cannot be equated. The two categories of Deputy Director - Medical and Non-medical - were never fused into one category or class, and there can be no question of any discrimination by reason of different scales of pay being given to them.

5. In Surinder Singh and another Vs. The Engineer in Chief, C.P.W.D. and others (A.T.R. 1986 S.C. 76), all daily rated employees were directed to be paid the same salary and allowances as were paid to regular and permanent employees. The following observations of the Supreme Court are relevant: -

"The Central Government like all organs of the State is committed to the Directive Principles of State Policy and Art. 39 enshrines the principle of equal pay for equal work. In Randhir Singh vs. Union of India (S.C.R. 1982(3) 298), this court has occasion to explain the observations in Kishori Mohan Lal Bakshi v. Union of India (supra) and to point out how the principle of equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine accepted throughout the world, particularly by all socialist countries. For the benefit of those that do not seem to be aware of it, we may point out that the decision in Randhir Singh's case has been followed in any number of cases by this court and has been

affirmed by a Constitution Bench of this court in D. S. Nakara v. Union of India (1983(2) S.C.R. 195). The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill-come from the mouths of the State and State Undertakings. We allow both the writ petitions and direct the respondents, as in the Nehru Yuvak Kendras case (supra) to pay to the petitioners and all other daily rated employees, to pay the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed."

In the above cited case, different sets of persons employed against the same post with identical duties were paid differently. It was not a case of different posts having separate recruitment rules etc.

6. In Randhir Singh Vs. Union of India and others (AIR 1982 S.C. 879), the Supreme Court observed as under: -

"8. 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. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Art. 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under

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the State. These equality clauses of the Constitution must mean something to everyone. 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."

However, the Supreme Court also made it clear that the principle of 'equal pay for equal work' applied only where all things are equal that is, where all relevant considerations are the same. In this connection, the observations of the Supreme Court in para 6 of Randhir Singh's case (supra) are extracted below: -

"We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, 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 pay merely because the posts are of the same rank and the nomenclature is the same." (emphasis supplied).

7. From the above, it is clear that merely because the posts carry the same nomenclature, the incumbents are not entitled to the same scale of pay. The contention that since in the initial stages, the different posts of Deputy Director in the National Institute of Communicable Diseases carried ^{almost} the same scale of pay, any upward revision of scale later on in the case of some posts was discriminatory, does not hold good. Attachment of the same scale ^{of pay} to different posts at a particular point of time may be incidental and does not necessarily

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imply that the posts carry the same responsibilities.

8. Our attention was also drawn to the recommendations made by the Director-in-charge of the National Institute of Communicable Diseases vide letter dated 8th June, 1976 (Annexure-1 to the petition) recommending that incumbents of all the posts of Deputy Director in the Institute be placed in the scale of pay Rs.1800-2250 in view of identical nature of duties and responsibilities of all the Deputy Directors. The recommendation was obviously not accepted by the Government. As observed by the Hon'ble Supreme Court in Randhir Singh's case (supra), the equation of posts and equation of pay are matters primarily for consideration by the Executive Government and expert bodies like the Pay Commission. Be that as it may, we have only to see whether the classification and the ^{resultant} non-equation are legally sustainable. In the present case, the classification and non-equation of the posts are based not only on the criterion of their belonging to different categories of Medical and Non-medical, but also on the criteria of distinct specialities and disciplines. Incumbents working in different fields of expertise, discipline and speciality cannot be considered to perform the same duties and shoulder the same responsibilities, even though the posts may be in the same organisation and bear the same nomenclature. Different sets of qualifications and experience were prescribe for the posts in Medical and Non-medical categories and separate recruitment rules were also framed for them. In the circumstances, we are unable to hold that the doctrine of 'equal pay for equal work' as enshrined in Article 39(d) of the Constitution is attracted in this case.

9. The petition fails and is hereby dismissed with no order as to costs.

(G. SREEDHARAN NAIR)
MEMBER (J)
13.3.1987

(KAUSHAL KUMAR)
MEMBER (A)
13.3.1987.