

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.746/
TXACXNO.

1966

DATE OF DECISION 7-6-91

SHRI PREM BALLABH & OTHERS Petitioners

SHRI E.X. JOSEPH Advocate for the Petitioner(s)

Versus
UNION OF INDIA & OTHERS Respondent

SHRI K.C. MITTAL Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. D.K. Chakravorty, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(J.P. SHARMA)
NUMBER (J)

(J.P. SHARMA)
MEMBER (J)

MEMBER (J)

D. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * * * *

OA NO. 746/1986

DATE OF DECISION

7.6.81

SHRI PREM BALLABH & 11 OTHERSAPPLICANTS

VS.

UNION OF INDIA & OTHERSRESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANTSSHRI B.X. JOSEPH

FOR THE RESPONDENTSSHRI K.G. MITTAL

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicants have filed a joint application under Section 19 of the Administrative Tribunals Act, 1985 for the redress of their grievance for not getting adequate pay on the basis of the work attached to the post and the degree of the skill involved in the work which has been denied to them by the order of Deputy Director of Administration (C & A) dated 23.7.1985. The applicants are working as Cook-cum-Bearers in Lady Hardinge Medical College, in short L.H.M.C. and

✓
✓

S.K. Hospital. The applicant has claimed the following reliefs :-

- (a) Quashing the striking down the decision by respondent No.1 conveyed in the letter No.V.21011/53/83-ME dated 23.7.1985 that the proposal for revision of the pay scale of cook-cum-bearers does not merit consideration;
- (b) Directing the respondents to grant to the petitioners the pay scale of Rs.210-4-250-EB-5-270 or alternately the pay scale of Rs.200-3-206-4-234-EB-4-250 as granted to the Cooks in the Hospital w.e.f. 1.1.1973 and the corresponding scales fixed on the basis of the report of the Fourth Pay Commission from the date on which the revised pay scales are fixed;
- (c) Directing the respondents to pay the petitioners consequential arrears of pay and allowances due;
- (d) Pass any other appropriate order which this Hon'ble Tribunal deems appropriate in the facts of the case; and
- (e) Awarding the cost of the petition to the petitioner.

2. Prior to February, 1978, L.H.M.C. was an autonomous body having a Board with Director General, Health Services as its Chairman. At that time, the applicants were getting a scale of Rs.70-85 and the same scale was being allowed to cook, Cook-cum-Bearers and Bearers. The Third Pay Commission has recommended three scales of pay for various scales which were Rs.225-308, 260-350 and 260-400. These scales were of the Cooks and Cook-cum-Bearers etc. in the Director of Estates.

de

In Central Water and Power Commission, pay scales of Cooks have been Rs.200-250 and another scale of Rs.210-270.

The Third Pay Commission in the Government hospitals under Director General of Health Services fixed the scale of pay of Cooks Rs.200-250 and that of Bearers as Rs.196-230.

The applicants stated that they are skilled workers and they cannot be given the minimum of scale of pay which is meant for unskilled hands like Chowkidar, Safaiwala and Farash etc. and so they should have been given a grade of Rs.200-250 which was given to Cooks on the recommendation of the Third Pay Commission. On the representation of the applicants, which were made repeatedly, the Ministry of Health and Family Welfare informed them on 25.7.1985 that the revision of the pay scales for the applicants does not merit the considerations. However, it has been suggested that the proposal for the revision of the pay scales of the post of Cook-cum-Bearer should be forwarded to the Fourth Pay Commission. However, the Central Fourth Pay Commission did not recommend any specific pay scales, but the replacement scale has been given which did not satisfy the applicants.

3. The respondents have filed the counter and they stated that the applicants are getting the same pay scales as Cooks-cum-Bearers as are admissible in the other hospitals and

J

dispensaries under the Director General of Health Services. The respondents have given the details in para-6(iv) and para 6(xxiv) of the counter.

4. We have heard the learned counsel for both the parties and gone through the record of the case. The applicants have stressed the principles of equal pay for equal work and the learned counsel for the applicants has referred to Randhir Singh's case, reported in AIR 1982 SC 879 as well as the case of Dharmender Chamoli Vs. Union of India, reported in 1986 (1) SCC 637, B.J. Thomas Vs. Union of India, reported in AIR 1985 SC 1124, Bhagwan Dass Vs. State of Haryana, reported in AIR 1987 SC 2049 and Jaipal Vs. State of Haryana-AIR 1988 SC 1504, but in all these cases there was a hostile discrimination between the two sets of persons discharging the same duties and responsibilities and working under the same employer. All these persons in these reported cases have been held to be equal in respect of their qualifications, the manner of recruitment and the work which was being done by them. However, it has been observed in all these cases that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the post concerned. If the classification

De

has reasonable nexus with the objectives sought to be achieved, efficiency in the administration, the state could not be unjustified in prescribing different pay scales, but if the classification does not stand the test of reasonable nexes and the classification is founded on illegal and unreasonable basis, it will be violative of Article 14 and 16 of the Constitution.

5. In the latest decision in the case of State of U.P. Vs. J.P. Chaurasia, reported in AIR 1989 SC 19, the Hon'ble Supreme Court held as follows :-

"Primarily it requires among others evaluation of duties and responsibilities of the respective post. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees of 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. If there is any such determination by a Commission or Committee, the court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

The learned counsel for the applicants almost conceded that it is primarily the function of the expert bodies to go into minute details of working out scales of pay of different

categories of employees under the same employer. In fact the letter dated 23.7.1985 issued by the Ministry of Health and Family Welfare, impugned in this case, has recommended to the authorities to make representation to the Fourth Pay Commission. It appears that the Fourth Pay Commission, an expert body had ^{not} gone into the merits of the claim of the applicants and only gave the replacement scales on the basis of the existing pay scales which were in force on the recommendation of the Third Pay Commission. It has been, therefore, argued with full force that at least the respondents should have constituted an expert body now to go into the minute details to find out the proper pay scales of the applicants as there are different pay scales existing for Cooks and Cook-cum-Bearers in the Directorate of Estates as well as in Central Water Power Commission which are the other organisations of the Central Government.

A person who gets employment as a Cook or Cook-cum-Bearer in other Central organisations may have better pay scales than the one who is employed as a Cook or Cook-cum-Bearer in the hospitals under the Director General of Health Services. The learned counsel for the respondents also supported the learned counsel that if a representation is filed by the applicants that shall be considered in the right perspective again by the Ministry of Health and Family Welfare because the matter has not been considered by the Fourth Central Pay Commission.

6. In view of this statement at Bar, during the course
of the arguments, by the learned counsel for the applicants as
well as respondents, we are of the view that the present
application can be disposed of with the following directions :-

That the applicants shall make a representation through
proper channel to the respondents and the Ministry of
Health and Family Welfare shall look into the genuine
grievances and inequality of pay scales alleged by
the applicants, if any, and on that basis may refer the
matter to an expert body and after the report of the
expert body, the representation of the applicants shall
be disposed of within a period of six month from the receipt
of this order.. In the circumstances, the parties are
left to bear their own costs. If the applicants are
still aggrieved, they can file the fresh application on
different cause of action.

John Doe.

(J.P. SHARMA) 7.6.51
MEMBER (J)

D. K. Chakravarty

(D.K. CHAKRAVARTY)
MEMBER (A)