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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 853 of 1986
T.A. No.

DATE OF DECISION 10
2.9.1987
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Shri R.C. Mittal

Petitioner

Shri R. Venkataramani

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri B.R. Prasher

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *YB*
2. To be referred to the Reporter or not ? *YB*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *See*

Bh. Arora
(-)

Central Administrative Tribunal
Principal Bench, Delhi.

....

REG. No. OA 853 of 1986

... Date of Decision 10.9.1987.

Shri R.C. Mittal

...

Applicant.

Vs.

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|-----|---|------------------|--------------|
| (1) | Union of India through
Secretary, Ministry of Health,
New Delhi. | Y
Y
Y | |
| (2) | Secretary,
Ministry of Education,
New Delhi. | Y
Y | Respondents. |
| (3) | Delhi Administration through its
Secretary, Medical and Public Health,
Delhi. | Y
Y
Y
Y | |
| (4) | Maulana Azad Medical College through
its Principal, Bahadur Shah Zafar Marg,
New Delhi. | Y | |

PRESENT

Shri R. Venkataramani, counsel for the applicant.

Shri B.R. Prashar, counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunal Act, 1985 against non-revision of applicant's scale of pay in the scale of Rs. 700-1600 at par with the pay scales of other Physical Directors of Colleges of Delhi Administration or identical posts of Physical Directors in the Colleges under the control of the Government of India. The application is based on the principle of equal pay for equal work.

2. The facts in brief are as follows. The applicant, Shri R.C. Mittal, was initially appointed on ad hoc basis to the post of Physical Director in the Maulana Azad Medical College, New Delhi, on 6.2.1964 in the pre-revised scale of Rs. 200-500. He was regularised on the basis of the recommendations of the U.P.S.C. on 20.9.1964. The Delhi Administration made its offer of appointment to the applicant on 14.5.1965 in

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the pre-revised scale of Rs. 200-25-500 subject to revision under C.C.S. (RP) Rules, 1960.

3. On 28.6.65 the applicant made his first representation to the Principal of the Maulana Azad Medical College to revise his then un-revised scale of pay to Rs. 400-800 at par with other Colleges under Delhi Administration. The Principal of the Maulana Azad Medical College wrote to Delhi Administration on 6.11.1965 to revise the applicant's scale of pay to Rs. 400-800 at par with other Colleges of Delhi University based on the recommendations of the University Grants Commission. On 26.7.1967 the Principal again recommended the applicant's case to Delhi Administration to revise his scale of pay from Rs. 200-500 to Rs. 400-950 (Annexure VI to the application). The Delhi Administration made a recommendation to the Ministry of Health and Family Planning on 6.1.67 to revise the applicant's scale of pay to Rs. 400-800. Nothing, however, appeared between 1967 and 1976. On 28.5.76, the Ministry of Finance revised the applicant's scale of pay from Rs. 200-500 to Rs. 400-750 in terms of the revision effected under the Third Pay Commission although according to the applicant the revision should have been with reference to Rs. 400-800. On 15.12.1982 Ministry of Education revised the scales of pay of Librarians, Physical Directors/Instructors and Documentation Officers in various Universities and Colleges. The scale of pay of the Physical Director was fixed at Rs. 700-1600 with effect from 1.4.1980. On 13.4.1983, the Dean of the Maulana Azad Medical College strongly recommended the revision of the scale of pay of the applicant from Rs. 440-750 to Rs. 700-1600 with effect from 1.4.1980. The Delhi Administration (Respondent No. 3) recommended to the Ministry of Health and Welfare to revise the applicant's scale of pay on 29.11.1983, but the Ministry directed the Delhi Administration to represent the matter to the Fourth Pay Commission. The Delhi Administration wrote to the Health Ministry on 22.2.1984 stating that since this

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matter relates to pre-1959 and not considered by the 2nd and 3rd Pay Commissions, it will not be good enough to refer it to the 4th Pay Commission (Annexure XVII) and requested them to approach the Ministry of Finance for revision of the scale of pay from Rs. 200-500 to Rs. 400-800 prior to 1.4.1973 and Rs. 650-1200 w.e.f. 1.1.1973 as requested by them earlier on 29.11.1983. But the Ministry of Health advised Delhi Administration to take up the matter with the 4th Pay Commission. The Delhi Administration then wrote to the 4th Pay Commission on 26.11.1984. The Commission submitted its report in June, 1986 suggesting the respective Administrations to examine each case and take a decision about the eligibility of the person to the pay scales of the post. On 13.8.1986 the applicant sent a notice to the Delhi Administration through his lawyer referring to the report of the 4th Pay Commission (Annexure XX to the application). The present application was filed in the Tribunal on 26.9.1986.

4. The case of the applicant is that there has been no dispute at any point of time about his possessing the prescribed qualifications for the post of Physical Director and as such, he is entitled to automatic placement in the revised scale of pay recommended by the 4th Pay Commission for the scale of Rs. 700-1300 or Rs. 700-1600 with effect from April, 1986 and arrears on the basis of the scales of Rs. 400-800 prior to 1.1.1973 and Rs. 700-1300 with effect from 1.1.1973 and Rs. 700-1600 with effect from 1.4.1980. The sole ground on which the applicant has sought relief is based on the doctrine of equal pay for equal work as the duties performed by him were similar as those discharged by the Physical Directors under the Ministry of Education or Delhi Administration. According to the applicant, this is the only case in which even though recommendations were made from time to time and which crossed the 2nd, 3rd and 4th Pay Commission without any revision of scale of pay at par with that of identical posts in colleges under Delhi Administration.

5. In their written statement, the respondents have admitted that the applicant was initially appointed on ad hoc basis as Physical Director on 6.2.1964 in the scale of Rs. 200-500 but was regularised in the scale of Rs. 200-500 subject to revision. The respondents also admit that the applicant made representations to Respondent No. 4 in 1965 and they recommended the case to Respondent No. 3 to revise the scale from Rs. 200-500 to Rs. 400-950. It is also admitted that the Ministry of Health and Family Welfare in their letter dated 18.8.1966 had directed that the disparities prevalent in some of the categories of the posts should be removed and that the same scale for the posts enlisted in the statement attached thereto are sanctioned as in other institutions. The statement included the post of Physical Director and a pay scale of Rs. 400-800 was recommended. But, as the sanctioning authority was Delhi Administration, it was for them to have ^{issued} ~~conveyed~~ the sanction to the revision of the pay scale of the post of Physical Director. It is also admitted that the Ministry of Finance on 28.5.1976 revised the pay scale of the post of Physical Director from Rs. 200-500 to Rs. 400-750 and that the Ministry of Education allowed the pay scale of Rs. 700-1600 for the post of Director, Physical Education, for persons possessing the qualifications of a post-graduate diploma or certificate of a degree in Physical Education vide its letter dated 15.12.1982. The revision in the pay scale was effective from 1.4.1980. Based on these recommendations, Respondent No. 4 had strongly recommended to Respondent No. 3 to revise the pay scale of the Physical Director from Rs. 400-⁷⁵⁰~~250~~ to Rs. 700-1600 with effect from 1.4.1980, but instead of revising the pay scale, the matter was referred to the 4th Pay Commission. It was ~~not~~ within the competence of the Delhi Administration to have allowed him the revised scale of pay and that the Delhi Adminis-

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tration could only recommend to the Government of India who alone could allow revised scales to officers under various Union Territories. The question of limitation under the Administrative Tribunal Act, 1985, should not arise in this case as the applicant has been constantly representing his case for revision of pay scale and has actually not drawn the salary under the revised scale of pay of Rs. 400-750 when according to him it should have been Rs. 400-800. The Delhi Administration in consultation with their Associate Finance have also been recommending the case of the applicant to the Central Government. It is relevant to note that the Ministry of Health & Family Welfare had directed that the disparity prevalent in some of the categories should be removed and that the same scales for the posts enlisted in the statement attached to their letter dated 18.8.1966 are sanctioned as in other institutions. The statement includes the post of Physical Director and the pay scale recommended was Rs. 400-800. The Ministry of Finance revised the pay scale of the Physical Director from Rs. 200-500 to Rs. 400-750 as this had escaped the attention of the 2nd Pay Commission. Later, the Ministry of Education allowed the scale of pay of Rs. 700-1600 with effect

from 1.4.1980, *apparently on the recommendations of the U.S.C.*

6. The learned advocate for the applicant has cited the following court rulings to support the case of the applicant that he must get the same salary as available to Physical Directors in other institutions under Delhi Administration or under the Government of India in Delhi:

1. 1982(1) S.L.R. p. 756.
2. 1985 Supp. S.C.C. p. 94.
3. 1986 (1) A.T.R. p. 76.
4. 1986 (1) A.T.R. 172.
5. 1986 (2) A.T.R. p. 79.

7. The Supreme Court in *Randhir Singh Vs. Union of India and Others* ^{case} has spelt out clearly that the Driver Constables in Delhi Police Force under Delhi Administration perform the same

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duties and responsibilities as other drivers in service of the Delhi Administration and paying them less is a discrimination hit by Article 16 of the Constitution. In the other case of P. Savita Vs. Union of India 1985(Supp.) SCC 94, the Supreme Court held that discrimination amongst persons holding identical posts and discharging identical duties must go and they should have drawn the same pay scale. This has been reiterated by the Supreme Court in the case of Surinder Singh Vs. C.P.W.D. - 1986 (1) S.C.C. 639 - stating the Constitution of India Articles 14 and 39 enjoin equal pay for equal work, even for daily rated persons. This has also been reiterated by the Supreme Court in the case of Dhirendra Chamoli Vs. State of Uttar Pradesh - 1986 (1) S.C.C. 637 - where the casual employees engaged on daily wage basis performing the same duties as class IV employees appointed on regular basis against sanctioned posts would get the same salary and conditions of service as Class IV employees. The court upheld the principle of equal pay for equal work. This principle has also been confirmed by the Central Administrative Tribunal, Principal Bench, in A.T.R. 1986 (2) C.A.T. 79 P.K. Taneja & Ors. Vs. Union of India and another.

8. In the present case it is quite clear that the applicant possesses the same qualifications and has the same experience as Physical Directors in other institutions under Delhi Administration or the Government of India and, therefore, the principle enunciated earlier will apply in his case. The question now is from what date he should be allowed the higher scale of pay. Will it be proper to go back to the pay scales prescribed by the ^{Bn} 2nd Pay Commission and later or the Tribunal will confine itself to provide relief after the applicant has come to the court or within the limitation period prescribed under the Administrative Tribunal Act, 1985? This Tribunal in the case of V.K. Mehta Vs. Secretary, Ministry of Information & Broadcasting - ^{UGC or the} A.T.R. 1986 (1) C.A.T. 203 - held that the Act does not vest any

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power or authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1.11.1982. In such a case there is no question of condoning the delay in filing the petition but it is a question of the Tribunal having jurisdiction to entertain a petition in respect of grievance arising prior to 1.11.1982. This is, of course, not a case where his application was rejected prior to 1982; in the original appointment order itself where the scale of pay was Rs. 200-500, it was mentioned that it was subject to revision and the revision did take place in respect of Physical Directors posts in other institutions in Delhi, but somehow the scale of the applicant was not revised and when it was revised to Rs. 400-750, the applicant did not accept it on the ground that it should have been Rs. 400-800. Once the principle of equal pay for equal work is accepted, it follows that the wrong done to the applicant must be corrected. In another case - ATR 1986(2) C.A.T. 162 - this Tribunal held that "we cannot convince ourselves that injustice perpetrated should be allowed to attain a grab of validity.....". No vested rights or interests would be affected by restoring to the applicant his rightful scale of pay at this stage.

9. Somehow, the revision of pay scale escaped the notice of the 2nd Pay Commission and the subsequent pay scales in respect of the applicant have been fixed without giving him the benefit of earlier revisions. The applicant is, therefore, entitled to the same scale of pay as admissible to other Physical Directors in other institutions ^{under} ~~in~~ Delhi. ^{Administrative} His pay scale under the recommendations of the Third Pay Commission and the Fourth Pay Commission should also be refixed after fixing his pay in the appropriate ^{or UGC} scale as recommended by the 2nd Pay Commission for similar posts which should be Rs. 400-800. The respondents are directed to refix the pay scale of the applicant accordingly and all arrears should also be paid to him from the date pay scales have been revised in

respect of Physical Directors in other institutions of Delhi under Delhi Administration or the Central Government. Fixation of pay and payment of arrears should be completed within a period of 6 months from the receipt of these orders by the respondents.

There will be no order as to costs.

B.C. Mathur
(B.C. Mathur) 10.9.87
Vice-Chairman