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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A.NO.975/1986

Date of Decision 30.1.92

Shri. Phool Chand,
L.I./92-A, LIG Flats,
DDA, Kalkaji,
NEW DELHI

Shri. Shyan Sunder Gautam,
119, State Bank Colony,
G.T. Karnal Road,
DELHI.

...Applicants

Versus.

1. The Secretary,
Ministry of Human Resources &
Development, 'C' Wing, Shastri Bhavan,
NEW DELHI - 110002.

2. The Chief Secretary,
Delhi Administration,
5, Alipore Road,
DELHI - 110006.

3. The Director of Technical Education,
Rouse Avenue Road,
DELHI.

...Respondents

CORAM :

1. Hon'ble Shri. Justice Rampal Singh

...Vice Chairman

2. Hon'ble Shri. P.S. Habeeb Mohammed

...Member(A)

For the applicant:

Shri. R.L. Sethi,
Advocate.

For the Respondents

Mrs. Avnish Ahlawat,
Advocate.

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(JUDGEMENT)
(Per Hon'ble Shri.P.S.
Habeeb Mohammed, MEMBER(A)

O R D E R

Shri.Phool Chand and Shri.Shyam Sunder Gautam who were working as Librarians in the Scale of Rs.440-750 under the Delhi Administration, Directorate of Technical Education have prayed for the issue of directions by the Tribunal to take urgent and early decision in the matter of grant of selection grade by granting them selection grade on a par with their counter parts employed in the sister organisations of the respondents with effect from the date when the selection grade fell due.

2. The first applicant was appointed as Librarian on 8-11-68 and was working in the Institute of Commercial Practice, Delhi under the Directorate of Technical Education. The second applicant Sh.S.S.Gautam was appointed on 26-8-67 and was posted in Arya Bhat Polytechnic, G.T.Karnal Road, Delhi. The Delhi Administration was running parallel sister institutions where counter parts of applicants were employed as Librarians in the scale of Rs.440-750. Respondent No.1 in the letter No.F 48-189/72 UTI dated 4th March, 1974 had issued instructions, in revising pay scales of Librarians.

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(Junior Librarian and Senior Librarian) that there will be selection grade equal to 15 per cent of the permanent posts of Librarian and appointments to the selection grade will be made on the basis of seniority subject to fitness. The instructions were further revised in letter No.A-11014/7/75-UTI dated 4th March, 1976 by which the percentage of selection grade post would be revised to 20 per cent of the permanent and temporary posts which have been in existence of 3 years or more (though this letter refers to the revision of pay of scales of school teachers, Annexure to the letter covers the senior Librarian as well as the Junior Librarian). It is stated in the application that in pursuance to the above orders respondent no.2 that is the Delhi Administration introduced selection grade for Librarians in the Senior Secondary Schools run by Delhi Administration, but the applicants who were working under the Directorate of Technical Education under the Delhi Administration were not given the benefit of the selection grade. The applicants represented against this discriminatory treatment but vide Annexure-4 No.F-123/1/77/TE/SC/13941 dated 3rd September 1977, though the Directorate of Technical Education under Delhi Administration recommended as follows:

"It is therefore, requested that the selection scale of Rs.740-880 may kindly be notified for the post

of Librarian of this Directorate at par with the scale of Librarians of Education Department as well as other categories in the same scale with effect from 1-1-73", this recommendation was not accepted. The Ministry of Education (the first respondent) has only been so far indulging in correspondence but no final decision has been communicated by the first respondent to Directorate of Technical Education, Delhi Administration.

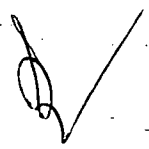
3. The stand taken in the reply by the respondents is that the two sets of institutions are run by two different departments that is the Directorate of Technical Education and another Directorate running the Senior Secondary Schools who cannot be termed as sister organisations and the comparison between two sets of institutions does not help because they are run by two different departments and Ministry of Finance, Government of India have used difference criteria for the grant of selection grade for the teachers in the various institutions. This reply has been filed by respondent (3) which purports to be a reply on behalf of all the respondents. The reply also ^hanexes a letter from Government of India (Annexure-R-1) letter No.F-13-86-T-10 dated 5-5-87 which quotes from the opinion of the Ministry of Finance, Government of India:

"The analogy of general education side put

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forward for the support of the proposal does not seem to be sustainable because Librarians on the Technical Education side were not enjoying selection grade prior to 1-1-73 while their counter parts in general education side were allowed the same".

4. During the arguments of the case the learned counsel for the applicants Shri.Sethi stated that respondents had adequate powers to grant selection grade for the Librarians under the Directorate of Technical Education of the Delhi Administration. The learned counsel for the applicant also placed for our perusal the judgement of this Bench of the Tribunal in OA No.330/89 dated 29-11-91 wherein one Shri.Mohammed Salim Akhtar who was working as Senior Librarian in the I.T.I. (under Delhi Administration) had claimed grant of selection grade on parity with senior Librarians working in the Education Department. The respondents in the above case were the Union of India through the Secretary, Ministry of Labour, Employment and Training and the second respondent the Chief Secretary, Delhi Administration. The judgement in the case was to the effect allowing the application in so far as grant of selection grade of pay and allowances was concerned for the Senior Librarian in the I.T.I. on a par with the Senior Librarian working in the Education Department.



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5. After perusal of the application the reply and other documents filed by the applicant and respondents and after hearing the arguments, we find that though they are called Librarians under the Technical Education Directorate, ^{there} and they are Librarians in the Higher Secondary Schools. The first respondent in examining the case had found that Librarians on the Technical Education side were not enjoying the selection grade prior to 1-1-73 while their counter parts in general education side were allowed the same. Besides though a work chart has been filed by the applicants as in Annexure-12, this work chart shows only the functions of the Librarians in the schools and the Technical Institutes and cannot be taken to be the work chart of the Librarians working on the General Education side or the Technical Institute. ^{where} The reply ^{is} that the respondent-3 that is the Directorate of the Technical Education had merely forwarded the cases of the applicants for selection grade on the insistence of the later; ^{it} is not ^{believable that} applicable ^{merely} because of the pressure from the applicants the third respondent had forwarded the applications without scrutiny or without being convinced about the genuineness of the stand of the applicants. Further it was for the respondent-1, the Government of India to take the decision.

6. The decision of the Tribunal in the case of Shri. Mohammed Salim Akhtar O.A.No.330/89 disposed of on 29-11-91 is to the following effect:

"The issue for adjudication in this case hinges, mainly around the correct factual position rather than the legal aspects. The doctrine of "equal pay for equal work for both men and women" is enshrined in Article 39(d) of our Constitution in the Directive Principles of State Policy and there is a catena of judgements by the apex court laying down the principles for determining whether two posts are equal or should carry equal pay. Both sides to this case agree that if the applicant is performing as Librarian of I.T.I. at Arab-ki-Sarai, functions which are similar in nature, volume and degree of responsibility to those shouldered by the Librarians in school in Delhi Administration, he has a legal right to claim parity in scales of pay and allowances. There is, however, strong difference of opinion as to whether the functions are equal or not. We see much force in the submissions of the learned counsel for the applicant that the clear and unambiguous contentions made in paragraphs 4.2, 5.1, 5.2 and 5.3 of the OA not having been controverted in the counter, the fact of parity and equality of the two jobs stands admitted and tantamounts to acceptance of the grant of equal pay in this case. We are of the view that the basic factual position has been settled in the pleadings of this case and that is the crux of the matter in this OA. We hold that after acceptance of the factual position about the parity of the two jobs through pleadings, further oral arguments

and reference to a plethora of legal citations would not change the basic position. We are fortified in our conclusion by the fact that there were never any disparities in pay scales and allowances between these posts till the implementation of the Chattopadhyaya Commission report in August 1987. In view of the admitted factual position regarding parity in the contents of the applicant as Librarian in the I.T.I. with those of the Librarians in the schools of the Delhi Administration, our findings in this regard and the well settled legal position regarding the doctrine of "equal pay for equal work", we hold that the applicant is entitled to the same conditions regarding pay and allowances as are applicable to Librarians in the schools of Delhi Administration. In other words, the Librarians in the I.T.I. should be allowed the selection Grade of Rs.1640-2900 after 12 years of service, as is available to the Librarians in the schools run by the Delhi Administration. As regards the grant of teaching allowance to the Librarians of I.T.I. no material has been brought to our notice to establish whether the other teachers and instructors in the I.T.I. have been allowed the teaching allowance of Rs.100 per month. In case the respondents have sanctioned teaching allowance to teachers, instructors or other categories of staff in the I.T.I., it would be only fair to extend the same to the Librarians on the analogy of granting teaching allowance to the Librarians in the schools run

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by the Delhi Administration. The other prayer made by the applicant, that, all disparities in service conditions between the Librarians of the I.T.I. and the Librarians of the schools under the Delhi Administration be removed and full parity be maintained amongst them in all respects is not admissible on the basis of factual position or any Government rules, regulations or instructions or legal proposition brought to our notice. We, therefore, allow the application partially only to the extent it relates to the grant of selection grade of pay and allowances. The age of retirement for the employees of I.T.I. is 58 years while in the schools run by the Delhi Administration it is 60 years. No case has been made out for parity in respect of age of retirement and we specifically reject the prayer for parity in respect of the age of retirement".

7. The ratio in this case ~~were~~ (the respondents ^{is} was not the Union of India in the Ministry of Education but the Union in the Ministry of Labour) ~~though they should not make any great difference~~, is that there were ^{no} ~~any~~ disparities in the pay scales and allowances between the posts of Librarians in the schools of the Delhi Administration and Librarians of the I.T.I. at Arab-ki-Sarai till the implementation of the Chattopadhyaya Commission report in August 1987, whereas in the case before us there is an extract from the noting at the Government of India level that the Librarians on the Technical Education side were not enjoying selection grade prior

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to 1-1-73 while their counter parts in General Education side were allowed the same and this point taken in the Annexure to the reply has not been controverted in the rejoinder filed by the applicants. In view of this it will not be possible for us to arrive at a conclusion that there was equality in the work done on the School Education side and Technical Education side and the applicants will be be entitled to the same service condition, as regards the selection grade or other benefits. In Sh. Mohd. Salim Akhtar's case (supra) the Tribunal had come to the conclusion that there was a case for the applicant, as it was held that the basic factual position ^{had} been settled in the pleadings of the case and it was crux of the matter in that OA and after acceptance of the factual position about the parity of the two jobs through pleadings, further oral arguments and reference to a plethora of legal citations would not change the basic position. The respondents ^{in the present O.A.} will take all the aspects into consideration and respondent-1 will consider the matter in the light of the facts and circumstances of the case and communicate the decision on the basis of the averments made and ^{any} further representations ^{made} which the applicants may make to the appropriate authorities.

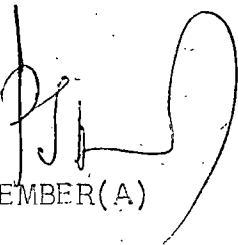
8. ^{by} It has been held ^{by} their lordship of the Supreme Court ^{have} held in the state of U.P. v. J.P. Chaurasia (AIR 1980 SC 19) ^{this court observed as follows:}

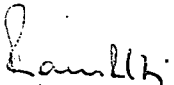
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"The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the 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 quation of posts of 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 suchdetermination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalent unless it is shown that it was made with extraneous consideration".

9. We dispose of this application with the directions to the respondents to consider all the facts and circumstances in the case or any further representation in the case, apolicants may make within a period of 4 months from the date of receipt of copy

of this order and communicate the decision. The
OA is disposed accordingly with no order as to
costs.


MEMBER(A)


VICE CHAIRMAN