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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1087
T.A. No.

1986

DATE OF DECISION 2.9.1988

Anil Baijal

Petitioner

Mr. A.S. Chadha

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Mr. P.P. Khurana

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

The Hon'ble Mr. Kaushal Kumar, 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?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

(Judgement of the Bench delivered by Hon'ble Mr. Justice J.D. Jain, VC

Mr. Kaushal Kumar
(Kaushal Kumar)
Administrative Member

J.D. Jain
(J.D. Jain)
Vice-Chairman

(X)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

D.A.No. 1087 of 1986

Anil Baijal

.. Applicant

Versus

Union of India

.. Respondent

CORAM: Hon'ble Mr. Justice J.D.Jain, Vice-Chairman.

Hon'ble Mr. Kaushal Kumar, Administrative Member.

PRESENT: Mr. A.S.Chadha, Advocate for the Applicant.

Mr P.R.Khurana, Advocate for the Respondent.

JUDGEMENT: (Judgement of the Bench delivered by Hon'ble
Mr. Justice J.D.Jain, Vice-Chairman).

The controversy in this Application under Section 19 of the Administrative Tribunals Act, 1985 (for short the Act) lies in a very narrow compass. Shorn of all superfluous details, the undisputed facts of the case are that the Applicant was appointed as First Secretary (Economic Cooperation) in the Embassy of India, Kathmandu (Nepal) vide order dated I.A.S. 21.9.1982. He was then a Senior Scale/officer in the pay scale of Rs. 2000-125-2250. The post of the First Secretary is in Grade V of the Indian Foreign Service and it is equivalent to the Senior Scale post of Indian Administrative Service. He was posted on deputation to the Embassy of India with effect from 4.10.1982. However, he was given the local rank of a Counsellor although not appointed to a substantive post of Counsellor vide decision of the Foreign Service Board dated 17.12.1982. It was obviously done with a view to establish diplomatic relations with the Foreign Office representational of Nepal at a higher level than that of First Secretary on the advice of Shri H.C.Sarin, ICS who was then Indian Ambassador to Nepal. However, he was not allowed any additional financial benefits consequent upon the grant of higher local rank of Counsellor.

2. Vide notification dated 25.5.1983 of the Government of India, Ministry of Home Affairs, the Applicant was promoted to the Selection Grade of the I.A.S. viz. Rs. 2000-2250 with effect from 15.7.1982 (copy Annexure 'B'). It was a date prior to the date of his taking over as First Secretary by two months. He, therefore, represented that he should be paid the entire arrears of salary as a Selection Grade Officer with effect from 15.7.1982 and be also given the enhanced status of a Counsellor from the very inception of his deputation to the Embassy of India (as distinct from the local rank of a Counsellor). However, he was paid the salary only for the period 15.7.1982 to 13.9.1982 i.e. till the date of handing over charge of the office of the Director of Education, Delhi Administration which he was holding before proceeding on deputation. His request for being granted the substantive scale of a Counsellor was duly recommended by Shri H.C. Sarin but it was turned down by the Ministry of External Affairs on the ground that he could not be allowed to take advantage of his promotion during his tenure at Kathmandu and he would continue to draw his pay and allowances as First Secretary. This decision was taken pursuant to the instructions issued by the Ministry of External Affairs vide letter No. Q/GA/791/51/82 (EAI/83/1/3) dated 22.2.1983 (copy filed by the Respondent). However, on repeated representations being made by the Applicant and ^{having been} promoted to the Selection Grade with effect from 15.7.1982, ~~ex post facto~~ sanction of the President was accorded to the fixation of his pay at Rs. 2,000/- per mensem with effect from 4.10.1982 in the Selection Grade of the Indian Administrative Service (copy Annexure 'D').

3. Having been granted the Selection Grade, the Applicant persisted in his representations for promotion to the substantive rank of Counsellor and for the grant of foreign/compensatory allowance and representational grant as was admissible to a Counsellor under the extant instructions embodied in Government of India, Ministry of External Affairs order dated 9.5.1983 (copy Annexure 'A'). He inter alia pleaded that even if there was/substantive ^{no} post of a Counsellor in the Indian Embassy at ^{could} Kathmandu, one such post ~~can~~ well be transferred to that Embassy from elsewhere to accommodate him inasmuch as such transfer of post from one Mission to another was being frequently done. He also referred therein to Government of India, Ministry of Home Affairs (Department of Personnel & A.R.) letter dated 21.2.1980 ~~etc.~~ which contained instructions regarding the upgradation of the post of Deputy Secretary to the level of Director in the Central Secretariat in respect of "those officers of the All India Service and the Central Services Grade-A who have been working at the Centre as Deputy Secretaries on deputation tenure basis and who have been granted Selection Grade in their respective cadres." of Rs. 2000-2250/- So he claimed that his upgradation as Counsellor will be purely personal to him but the said request was again turned down and he was informed by the Ambassador vide his letter dated 19.7.1985 that " question of upgradation of the Senior Scale post occupied by you and making it personal to you was considered but has not been agreed to. There is sympathy for you but this is one of the problems of non-IFS officials posted abroad where the need for

posting officers of the appropriate seniority should have been borne in mind to avoid subsequent problems arising from non-implementable promotions." Faced with this predicament, the Applicant once again represented (copy Annexure 'G') that at least the foreign/compensatory allowance and the representational grant be suitably revised in terms of the Ministry of External Affairs letter dated 21.11.1974 addressed to the A.G.C.R. (Annexure 'H' being a copy of the letter). However, the aforesaid representation was neither acknowledged nor replied to by the Respondent. Eventually the Applicant relinquished the charge of his post at Kathmandu on 14.10.1985 and he was repatriated to India as a Director in the Ministry of Civil Aviation.

4. The Applicant has now sought a direction from this Tribunal to the Ministry of External Affairs to allow the benefit of foreign allowance and representational grant attached to the post of a Counsellor to him for the duration of his posting in the Embassy of India, Kathmandu i.e. from 4.10.1982 to 14.10.1985.

5. The Application is resisted by the Respondent who contend that the post of the First Secretary to which the Applicant was appointed is equivalent to the Senior Scale of IFS which is also senior scale of the IAS i.e. 1200-2000 while the post of Counsellor in the Missions is in Grade IV of the IFS equivalent to the Selection Grade of the IAS (2000-125-2250) and that the Applicant having been posted only as First

Secretary in the Embassy with the local rank of a Counsellor was not at all entitled to the Selection Grade post of a Counsellor in the Embassy. On a parity of reasoning, he was not entitled to the foreign/compensatory allowance or representational grant admissible to a Counsellor holding a substantive post in that rank. They point out that letter dated 22.2.1983 reiterates the instructions contained in the Ministry of Finance OM dated 17.10.1960 extracted as decision No. 5 below FR 30 (Swamy's Compilation). It deals with the application of 'next below rule' and states that "a Government servant who is deputed abroad to hold a post in Indian Mission/Post abroad will not be entitled to benefit of promotion to which he/she would have become eligible in his/her parent cadre, during the period of his deputation abroad (emphasis ours). Such an officer, however, can be given the deemed date of promotion subject to the fulfilment of all the conditions of 'Next Below Rule' including 'one-for-one' principle, but the actual benefit will accrue only when the officer has been actually appointed in the higher post in the cadre immediately on reversion from the deputation." Thus, the Applicant, according to them, was not entitled to the benefit of the Selection Grade granted to him while he was on deputation. Further, according to them, the salary of the Applicant was fixed at Rs. 2000/- per mensem as it was "Upper ceiling in the pay scale of the Senior Scale of the IFS". Thus, the decision was only to fix the pay at Rs. 2000/- per mensem and in any case not to grant him the substantive rank

of a Counsellor or to allow him any other allowances. They explain that the request of the Applicant for promotion as substantive Counsellor with full pay and allowances was turned down by the Ministry of External Affairs because no such post was sanctioned for the Indian Embassy at Kathmandu and therefore the Joint Secretary (AD) of the Ministry of External Affairs had written that the Ministry felt sympathy with the Officer but that was one of the problems faced with non-IFS officers posted abroad where the need for posting officers of the appropriate seniority should have been borne in mind to avoid subsequent problems arising from non-implementable terms. The letter of the Joint Secretary further stated "after all the post was that of First Secretary and the officer selected should have been preferably of that rank throughout the posting period." Thus, according to them, the instructions contained in the Ministry of External Affairs letter dated 22.2.1983 governed the case of the Applicant and he could make no grievance about non-grant of foreign/compensatory allowance and representational grant at enhanced rates meant for a Counsellor appointed substantively to that post. They deny that any indulgence was shown to anyone else under similar circumstances but add that even if such an instance could be found out, it must be a case of wrongful benefit to which the Applicant cannot lay any claim. They have explained that the post of a Counsellor is an IFS Cadre post and it could not be transferred to Kathmandu as was sought by the Applicant without prejudice/detriment to an IFS Cadre officer. Adverting to letter dated 21.2.1980, Annexure 'E', the Respondents have urged that the same is not

applicable to the case of non-IFS officers deputed to Indian Missions abroad. Hence the fact that the salary of the Applicant was refixed at Rs. 2000/- by way of concession would not entitle him to the grant of foreign/compensatory allowance and representational grant admissible to a Counsellor on a substantive post.

5. We have bestowed our careful thought and consideration on the issues sought to be raised by the Respondent and we find that the pleas raised by them are wholly fallacious and devoid of any merit. On a bare reading of the instructions contained in letter dated 22.2.1983 of the Ministry of External Affairs it is clear that it applies to a case where a non-IFS officer who is deputed abroad to hold a post in the Indian Mission etc. cannot claim / benefit of promotion to which he/she would ^{have} ~~not~~ become eligible in his/her parent cadre during the period of his deputation abroad. The words underlined by us leave no room for doubt that the Respondents have applied the aforesaid instructions on a total misconception of the same inasmuch as the Applicant had been granted the Selection Grade from a date much prior to the date on which he joined as First Secretary in the Indian Mission at Kathmandu. So the question of his entitlement to ^{the} Selection Grade during his posting abroad did not arise. Admittedly, the post of the First Secretary is equivalent to a Senior Scale post in the IAS and the post of a Counsellor in the Indian Embassy at Kathmandu is equivalent to that of a Selection Grade post of the IAS. That being so, the Applicant would have been appointed as a Counsellor from the very inception of deputation had Selection Grade been granted to him.

well in time. However, the notification regarding his Selection Grade with retrospective effect was issued seven months after his joining the said post. Hence, by no stretch of reasoning, it can be said to be a case of 'Next Below Rule' as is sought to be made out. As explained by the Government itself in the Ministry of Finance letter dated 3.10.1962 (Decision No. 2 below FR 30, Swamy's Compilation), the intention underlying the rule "is that an officer out of his regular line should not suffer by forfeiting the officiating promotion which he would otherwise have received had he remained in the original line." In other words, such a situation may arise when a person is already on deputation but in the meanwhile, he becomes entitled to promotion to the next higher grade in his parent cadre. This is not so in the instant case and therefore in all fairness the Applicant ought to have been promoted to the rank of a Counsellor in his own right after having been granted Selection Grade in the IAS.

6. As for the letter of the Joint Secretary, adverted to above, we are constrained to observe that a duty was cast on the concerned authorities, in view of the instructions contained in their letter dated 22.2.1983, to ensure that after due screening only such officers were sent abroad as were not likely to be promoted to any higher grade or post in their parent Department during the period of deputation. If the concerned authorities failed to be vigilant in this respect and did not bother to check up whether the Applicant was due for the grant of Selection Grade or not at the time of his selection for posting abroad in the

Indian Mission, there is no valid reason why the Applicant be made to suffer on that account. It is a strange argument on the part of the Respondent that the Applicant would not be entitled to the benefit of higher scale because their own personnel officers failed to perform their duty by/doing the necessary screening enjoined upon them by letter dated 22.2.1983. Surely, the Respondent cannot take advantage of their own negligent act and justify refusal to promote the Applicant to the grade of a Counsellor which he richly deserved under the extant policy. Letter dated 9.5.1983 of the Ministry of External Affairs, Government of India (copy Annexure 'A') prescribes the revised rates of foreign allowance and representational grant for India-based officers of representational grades of the Embassy of India, Kathmandu. So on having been granted Selection Grade in the IAS the Applicant was entitled to the emoluments including all allowances payable to a Counsellor which is an equivalent post in the IFS.

7. That apart, the fact remains that the Applicant was enjoying the local rank of a Counsellor which obviously means that in his dealings with the Foreign Office of Nepal Government/for all intents and purposes a Counsellor. In other words, he was performing all the duties and functions as would have been performed by a Counsellor holding substantive rank. There was no compulsion on the part of the Respondent to grant him local rank of a Counsellor while the Applicant was in fact appointed as First Secretary in the Indian Embassy. Obviously, that was

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done in order to raise the status of the Applicant and the level of his dealings with the Foreign Office of Nepal Government. If that be so, he was expected to maintain that level of dealings with the Foreign Office of Nepal Government. This inference is amply borne out by the note which was put up before the Foreign Service Board meeting held on 17.12.1982 which is as under:-

" It was felt that the lowering of our representation in the Economic Wing of our Mission at Kathmandu might cause misgivings in Kathmandu. It was, therefore, administratively decided to grant higher rank of Counsellor to Shri Baijal without any additional financial benefits."

Evidently, this note was recorded in the context of the posting of the Applicant as First Secretary in the Embassy of India, Kathmandu vice Shri Virendra Prakash who was holding the substantive rank of Minister. So, there can be no shadow of doubt that the Government of India did not want to lower the status of its representative in the Economic Wing of Indian Mission at Kathmandu and, therefore, they devised the method of giving local rank of a financial Counsellor to the Applicant by denying any additional benefits to him.

8. It may be pertinent to notice here the significance and the import of the expressions "foreign/compensatory allowance" and "representational grant"

The expression "foreign allowance," as per Ministry of External Affairs letter No.Q/GA/791/22/69(Vol.D) dated 4.4.1970 (copy Annexure III to the Rejoinder), means:

"1. Foreign Allowance-(I) Foreign Allowance is intended to cover the additional cost of living at the station where the officer is posted as well as expenditure which an officer, while serving abroad, has necessarily to incur either at home or abroad, over and above that which an officer of corresponding category serving in India is expected to have to bear."

It is obvious on its plain language that the foreign allowance is in the nature of reimbursement for the additional cost of living at the station where the officer is posted as well as expenditure which an officer, while serving abroad, has necessarily to incur either at home or abroad. The expression "representational grant," as per M.E.A. letter dated 1.9.1985 (Annexure IV to the Rejoinder), implies "an annual grant for the whole of a financial year, but is expressed in monthly figures representing one-twelfth of the grant. It is sanctioned to Heads of Missions/Posts and other officers of of representational grades and is meant to be utilised on representational expenditure" (emphasis ours) which inter alia includes the expenditure of the kinds described therein, viz. :

- (i) Representational entertainment;
- (ii) Expenditure on house guests; and
- (iii) Expenditure on local charities and donations.

Evidently, this grant too is provided to the Heads of

Missions/Posts and other officers in the Indian Embassies with a view to meet certain kinds of expenditure as detailed in Annexure IV (supra). So, there can be no room for doubt that on being given the local rank of a Counsellor, the Applicant was expected to maintain and conduct himself as if he were a Counsellor for all intents and purposes in respect of his dealings with the Foreign Office etc. of the Nepal Government. In other words, he was expected to entertain and extend courtesies to the concerned people of the Nepal Government at the representational level of a Counsellor and not of a First Secretary. The Foreign Office of the Nepal Government ^{would have} too/expected the Applicant to entertain them or extend courtesies at the representational level of a Counsellor rather than First Secretary. The conclusion would, therefore, be inescapable ^{out} that once the Applicant was held/to be a Counsellor by the Indian Embassy, he must be performing all the functions and discharging all the duties in his capacity as a Counsellor rather than First Secretary in the Indian Embassy which expression in all probability he could not even use in his correspondence and dealings with the Foreign Office of the Nepal Government. The mere fact, therefore, that he was internally granted the local rank of a Counsellor for want of a substantive post of a Counsellor in the Indian Embassy at Kathmandu would not detract from the legal position that for all intents and purposes he was a Counsellor in the Indian Embassy in spite of the fact whether he was substantively appointed as such or not.

9. The doctrine of 'equal pay for equal work' is now well established by a long catena of Supreme Court judgements starting from /1982) 1 SCC 618. It is no longer considered to be a mere abstract doctrine not capable of being enforced in a court of law.

In Surinder Singh and Another v/s Engineer-in-Chief, CPWD and others -(1986) 1 SCC 639 -, such an argument was advanced by the learned Counsel for the Central Government but it was repelled by their Lordships with the observations :

"We are not a little surprised that such an argument should be advanced on behalf of the Central Government 36 years after the passing of the Constitution and 11 years after the Forty-second Amendment proclaiming India as a socialist republic. The Central Government like all organs of the State is committed to the Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work.

In Randhir Singh v. Union of India, this Court has occasion to explain the observations in Kishori Mohan Lal Bakshi v. Union of India 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 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.

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."

10. That apart, the mandate of equality enshrined in Article 14 of the Constitution of India is that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work of equal value. Evidently, the doctrine of 'equal pay for equal work' shall come into play the moment it is found that the nature of the functions and duties to be performed by a person are identical or almost similar to those performed by another Government employee of a comparable status. In Dhirendra Chamoli and another v/s State of UP (1986) 1 SCC 637, which was a case of Grade IV employees of Nehru Yuval Kendras in the country, it was held that:

"These employees who are in the service of different Nehru Yuval Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employees. It makes no difference.

whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees." (emphasis ours).

11. It is thus crystal clear that the fact that does not there/exist a sanctioned post against which a Government employee is asked to function is of no consequence and the decisive factor for grant of equal pay is the nature and the type of duties and other functions which the incumbent is required to perform.

12. We may also advert in this respect to M.P.Singh, Deputy Superintendent of Police, Central Bureau of Investigation and others v/s Union of India and others ((1987) I SCC 592). In that case, special pay was granted to certain C.B.I. officers for arduous nature of their duties. Deputationists who had been drawn from State Cadres were, however, getting higher special pay, apart from deputation allowance, than the non-deputationists recruited directly by the C.B.I. It was noticed that higher special pay was not connected with richer experience or displacement of deputationists from their parent departments. Further, nature of duties of deputationists and non-deputationists was the same. Under the circumstances, it was held that denial of special pay to non-deputationists was violative of Articles 14 and 16 of the Constitution of India.

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The following observations of the Supreme Court are very pertinent in this context:-

" From the foregoing discussion it emerges that the Special Pay that was being paid to all the officers in the cadre of Sub-Inspectors, Inspectors and Deputy Superintendents of Police in the Central Investigating Units of the Central Bureau of Investigation has nothing to do with any compensation for which the deputationists may be entitled either on the ground of their richer experience or on the ground of their displacement from their parent departments in the various States, but it relates only to the arduous nature of the duties that is being performed by all of them irrespective of the fact whether they belong to the category of the 'deputationists' or to the category of the 'non-deputationists'. That being the position, the classification of the officers working in the said cadres into two groups, namely, deputationists and non-deputationists for paying different rates of Special Pay does not pass the test of classification permissible under Articles 14 and 16 of the Constitution of India since it does not bear any rational relation to the object of classification."

Reference in this context may also be made to Bhagwan Dass and others v/s State of Haryana and others ((1987) 4 SCC 634) and a recent judgement of the

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Supreme Court in Y.K. Mehta and others v/s Union of India and another (Judgements Today 1988(3) SC 466. In the latter case, a question arose whether the Staff Artists of Doordarshan, who were employed on contract basis up to the age of 55-60 years and were paid emoluments termed as 'fees' on a time scale termed as 'Fee Scales', were Government servants. While answering this question in affirmative, the Supreme Court further held that the Staff Artists were performing work similar to that performed by their counterparts in the Film Division and as such the doctrine of 'equal pay for equal work' would be attracted. Observed their Lordships:

"When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two in the matter of pay.

One of the directive principles of State Policy as embodied in clause (d) of Article 39 of the Constitution, is equal pay for equal work for both men and women. The provision of Article 39(d) has been relied upon by the petitioners. The directive principles contained in Part IV of the Constitution though not enforceable by any court are intended to be implemented by the State of its own accord so as to promote the welfare of the people."

13. To sum up, therefore, we hold that if the doctrine of 'equal pay for equal work' enshrined in Article 39(d) of the Constitution of India is not given effect to in the instant case, it will amount to arbitrariness and hostile discrimination to incumbents performing the same kind of functions and discharging similar duties. As a necessary corollary, it would be violative of Articles 14 and 16 of the Constitution of India. Hence, we hold that denial on the part of the Respondent to pay foreign/compensatory allowance and representational grant at the rates payable to a Counsellor is vitiated by the vice of arbitrariness and discrimination between persons performing the same kind of functions and discharging similar duties. We, therefore, allow this Application and direct the Respondent to pay foreign/compensatory allowance and representational grant to the Applicant at the same rates as are admissible to a Counsellor in the Indian Embassy at Kathmandu as per Annexure 'A' to the Application for the entire period of his deputation to the Indian Embassy at Kathmandu viz. from 4.10.1982 to 14.10.1985 within two months from today. A copy of this order be sent to the Respondent at once for due compliance. Since it does not appear to be a case of malafides, we make no order as to costs.



(Kaushal Kumar)
Administrative Member



(J.D. Jain)
Vice-Chairman

Sept. 2, 1988.