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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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AHMEDABAD BENCH
NEW DELHI BENCH

O.A. No. 119 of 1986
Fax No.

DATE OF DECISION 5.7.91

Shri Surya Narain Saxena Petitioner

Petitioner in person Advocate for the Petitioner(s)

Versus

Union of India & Anr. Respondent

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

CORAM :

The Hon'ble Mr. P.H. Trivedi Vice Chairman

The Hon'ble Mr. T.S. Oberoi 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 ? no
3. Whether their Lordships wish to see the fair copy of the Judgement ? no

T.S. Oberoi
m (J)

Shri Surya Narain Saxena,
B-79, Swasthya Vihar,
Delhi - 110 092.

..Applicant.

Versus

1. Secretary,
Ministry of Information
and Broadcasting,
2. Secretary,
Department of Official Language,
Ministry of Home Affairs. ..Respondents.

JUDGMENTS CITED.

1. SLJ-1989 (1), SC-97
Y.K.Mehta Vs. Union of India and Ors.
SLJ - 1989 (2) SC.P.49, P.L.Shah,
2. SLJ 1987 (4) 710,C.A.T.,
Surinder Singh Vs. Union of India and Ors.
3. SLJ 1990 (3) 181 -CAT,
Tota Ram Sharma Vs. Union of India and Ors.
4. ATR 1986 (2) C.A.T.-79,
P.K.Taneja Vs. Union of India and ors.
5. J.T. 1987 (3) SC 384,
Iner Singh Vs. Vyas Muni Mishra.
6. AIR 1988 SC 1505
7. 1974 (2)SCR 249
8. 1985 (Sup) SCC 94 827
P.Savita Vs. Union of India and Ors.
9. A.I.R. 1976 SC 1559
10. R..R.Dalavai Vs. State of Tamil Nadu.
10. 1990 (2) SCC p.396
Dharwad Distt. PWD Librate Daily Wage Employee
Association Vs. State of Karnakata and Others.

JUDGMENT

Per : Hon'ble Mr.P.H.Trivedi : Vice Chairman

The applicant who has retired, in this application under Section 19 of the Administrative Tribunals Act, 1985, challenges the order dated 21/23, January, 1986 by which his representation regarding discrimination alleged by him against Indian Language Editors vis-a-vis English Language Editors. The applicant was a member of the Central Information Service of the Ministry of Information and Broadcasting right from its inception in 1961 and has served in various capacities among which he has been Editor of Bal Bharati from February 1, 1975 to June, 1979 in the pay scale of Rs.700-1300 which formed grade II of the Central Information Service (C.I.S.). He was promoted and transferred in October, 1979 to the Directorate of Advertising and Visual Publicity in the same Ministry in the pay scale of Rs. 1100-1600 in grade I of C.I.S. He then worked as Campaign Officer from October 7, 1979 to April 30, 1980 on which date he retired. He feels aggrieved by the disparity in the pay and pay scale allowed to him as Editor of the Bal Bharati and to the editorial staff of the English periodical like 'Yojana', 'Indian & Foreign Review' and 'Sainik Samachar' of the same Ministry which have been allowed pay scale of Rs. 1500-1800. He made a number of representations between July, 1976 and September, 1985 making out a case for parity scale. No reply is given to him except that annexed A dated September 7, 1985. The applicant alleges that the higher pay scale given to the English Periodicals and disparity between that pay scale and

pay scale allowed to Lanugage news paper is a hang-over of the mentality and the caste status regarding English as a top status (Dwija) and religious Indian Language periodical to that of 'antyaja'. There is absolutely no other basis for distinguishing the pay scale of editorial staff in periodical and of English periodicals. He therefore, considers that the violation of principle of equal pay for equal work was attracted Articles 16 and 39 of the Constitution, for which he claims relief.

2. The petitioner has averred that parity between the pay scale of language and English periodicals of the Ministry was supported by Kendriya Hindi Samiti.

This body is headed by the Prime Minister and administered by officials in department of Ministry of Home Affairs

in the Government. The applicant vigorously contends that by ~~criteria~~ ^{of} criteria of the circulation, content, number of

pages and popularity Bal Bharati which, he avers, is far superior to those of the English journals like 'Yojana',

'Indian & Foreign Review' and 'Sainik Samachar', which have been subjected of much criticism unlike Bal Bharati

which has been commended. Under his editorship of the applicant the circulation of Bal Bharati recorded an increase from 23,000/- to more than 60,000/-.

The proposal for upgradation of the post of Editor in the scale of Rs.1100-1600 was moved in 1977 but the post

was upgraded only in February, 1979 and was filled by grade I officer only on 8.6.1979. A committee was

appointed under chairmanship of the Joint Secretary of the department of Official Language and on its recommendation a study was conducted about the pay

scales and other conditions of English and different language periodicals. This disparity was discussed in the 14th meeting of Hindi Samittee. The officials

in the department of the Home Ministry according to the applicant cited the case of Bal Bharati as an example of

discrimination and recommended the pay scale of Rs.1500-2000 for its Editor. These findings and proposals were circulated to all Ministries. Although Prime Minister and the Minister of Information and Broadcasting are members of the body which made this recommendation these have not been implemented. The post of the Editor Bal Bharati was upgraded to the scale of Rs.1100-1600/- but this upgradation still continued the disparity because the pay scale Rs.1500-1800 was given to English editors. A proposal was made for the consideration of promotion of the applicant by the Director of Publication Division in August, 1978 but it was turned down. Because of the disparity between language periodicals and English periodical, being far from being moderated, even promotion of a batch of grade II officers to grade I was delayed until October, 1979 and the applicant was transferred as Campaign Officer in the Director of Advertising and Visual Publicity from which post he retired. On these grounds the applicant has asked for relief of the applicant to be deemed to have worked as Editor, Bal Bharati in the pay scale of Rs.1500-1800 in the Junior Administrative Grade of the Central Information Service w.e.f. February, 1, 1975 to April, 30, 1980 and for a direction for the applicant's pay to be revised for pension and other retirement benefits and also to pay arrears thereon with interest of 12% or in the alternative to pay him a consolidated amount of Rs.1,55,000/- in lieu thereof.

3. In reply, the respondents have stated that the applicant was appointed in the grade IV in the lowest grade in the service on 1.3.1970. Then he was appointed in grade III and grade II on regular basis from 28.2.1970, and 28.3.1978 respectively. He was appointed to grade I Rs.1100-1600 on ad hoc basis w.e.f. 6.10.1979 and he retired on attaining the age of superannuation w.e.f. 13.4.1980. While working as Assistant Editor in publication

division in the scale of Rs.700-1300, the applicant edited a journal viz. Bal Bharati from 1.2.1975 to 8.6.1979. The respondents admitted that the circulation of the journal was 23,000 but later on exceeded 60,000 copies. They contend that it so happened mainly because the Govt. of U.P. ordered for nearly 24,000 copies of Bal Bharati. The proposal to upgrade the post of the Editor to the scale 1100-1600 was moved in 1977 but this was upgraded only in February, 1979 and was filled up only on 8.6.1979. The applicant represented for his posting as Editor, Bal Bharati in the scale 1500-1800 or at least in scale of Rs.1100-1600 while he was working in the scale Rs.700-1300 which he was too junior for consideration for 1100-1600 and no officer can claim out of turn promotion in an organised service although the post he holds carried higher responsibility. For these reasons, question of promotion was not considered in his favour.

4. The main ground of the respondents against this claim of the applicant is that the ~~journals~~ pay ~~scale~~ of the editors depend not only on circulation but also on the subject matter, periodicity, quality of articles or nature of contributions with whom the editor has to deal. Bal Bharati is a monthly journal for children and when the journal grew ~~in scale~~ the post was upgraded to 1100-1600 but the applicant could be promoted only in his turn. The staffing pattern for the journals published by publications Division under the Ministry of Information and Broadcasting depends on various factors including content subject matter and circulation and therefore, there can be no truth in the plea of discrimination on language the basis of discrimination ~~between~~ 'Vojna' 'Indian and Foreign Review' and Bal Bharati periodicals. Besides improvement in circulation depends not only on the editor but the co-operation and contribution offered by all other officers,

officers of the Central Information Services are transferred and are transferable from one post to another. Besides the promotion of officers depend upon the Departmental Promotion Committee's recommendation. It cannot be done regardless of such procedure being followed. Recommendation of the Kendriya Hindi Samittee on the staffing pattern or of the sub-committee appointed by it to go into various problems by the department of official language do not become the decisions of the Govt. automatically and remain only recommendations even though some of such bodies may be headed by the Prime Minister.

Regarding the ~~respondent's~~ contention in para 13 of page 59 regarding promotion of the applicant, the respondents contend that until 1980, the post in grade I were filled up on the basis of DPC on selection from among the officers working in grade II and since 1980 on the basis of seniority cum fitness. The question of out of turn promotion of the applicant on the basis of recommendation of the Director, Publication Department could not be done according to the C.I.S. Rules. In para 15, the respondents have stated that a senior of the applicant was promoted on 8.6.1979 to the post of Editor, Bal Bharati in the pay scale Rs.1100-1600 and therefore, the promotion of the applicant could be done only in October, 1979. He, therefore, has no right to this promotion in grade I as his turn for promotion came only in October 1979. The recommendation of the department of official language to the applicant as referred to were not found acceptable ~~in~~ by the Ministry of Information and Broadcasting. The circulation made by the department of the official language of the recommendation to various ministries was not an order but for examination as they were recommendations. These recommendations were examined and the fact that they were circulated on 16.2.1979 and the post was upgraded in June, 1979 after consulting various authorities shows that there was no delay and that upgradation was not done reluctantly.

Re

5. The applicant has filed a rejoinder in which he has mainly reiterated the contentions earlier raised by him. He has mainly alleged that his transfer as Campaign Officer on the eve of retirement shows the malafide on the part of the respondents and that the applicant could have been promoted on ad hoc basis if his merits justified out of turn promotion as such ad hoc promotion is allowed by Rules. He has countered the respondents' stand that the circulation grew only because U.P. Govt. ~~is~~ ordered the 23,000 copies by stating that other newspapers did not receive such orders. The applicant has dwelt on the fact that inspite of higher pay scale and disparity other newspapers have not made adequate mark and has pointed out the failure of action taken to remove the disparity as clearly showing the prejudice and bias of the respondents towards the language newspapers.

6. The important question of limitation must be examined before proceeding with the merits of the case. The relief claimed by the applicant is in terms of promotion from a date much earlier than the date of the application. The mere fact that his representation was made earlier and his final representation has been answered from the Prime Minister's office in 1985 may not keep his claim alive on that ground. Section 21 of the Administrative Tribunals Act clearly debars it. Our attention however, has been drawn to a judgment 1990 (3) (CAT) 181 - Tota Ram Sharma ^{by} Vs. Union of India / the Principal Bench cited 1987 ATC 444

to 447- Gopal Anant Musalgaonkr Vs. Union of India, 1987 (2),
W.D. 1987
), a plea of discrimination as being violative of fundamental
right is held to give a recurring cause of action, and
that The reply given from the Prime Minister's office
which is made by the applicant could arguably over come
the bar of limitation. We are not entirely persuaded,
however that in this case, the bar of limitation can be

got over merely by citing latest decision from the Prime Minister's office rejecting the claim of the applicant. However, in view of the fact that the applicant has raised through his application a question of wider ramifications, we have decided to dispose of the case on merits also.

7. The applicant has cited a batch of cases to show that in some cases, the Courts have ruled that there was discrimination and by analogy the applicant seeks to establish that there has been discrimination against ^{some other} him and against any language periodicals also. The test clearly is whether the basis of fixing pay scales for Editors for English and language periodicals and ^{other} Bal Bharati and other English periodical in particular is based upon any rational classification or is justified because the work and duties of the Editor of Bal Bharati are shown to be similar or identical with those of other periodicals like 'Yojana'. We have no doubt in our mind that different periodicals aiming a different classes of readership or of different levels of maturity, of taste, and ^{of} sophistication cannot be regarded similar merely on the basis of the figures of circulation. There are periodicals which appeal to a class of intellectuals which have limited circulation but that it demands a much higher educational sophistication from its Editors who have to deal with a different class of contributors because the readership aimed at is very different in its maturity, education and sophistication.

Indeed, even ^{if} ~~were~~ such periodicals ^{are} to be in the same language, it cannot be regarded that they are similar or identical on that ground or even if their circulation were similar to that of another periodical aiming at a different kind of readership, it could be regarded as entitling them to a similar scale. We refrain from naming popular periodicals and quality periodicals in this connection but any reader would ^{be} take the point if he brings to his mind

different periodicals in Hindi or English. Clearly, Bal Bharati which is a children's magazine would have distinguishing features which sets it apart from even other children magazines which could vary in subject matter, content, quality of contribution and readership. The applicant has cited various cases wherein on facts examined by the Courts in them, it was established to the Court's satisfaction that the personnel or staff concerned were performing substantially same or analogous duties and their experience and qualifications were not distinguishable and on that, the Courts have properly applied the principle enshrined in articles 16 and 39 and on holding that there was adverse discrimination, gave necessary relief. The case of Editors or Editorial staff of the publications in question and of personnel like drafts men etc., dealt with in the cases cited as obviously dissimilar and distinguishable. We would not like to burden the record by a detailed examination of the differing facts and circumstances and of the case and how they are not applicable to those of this case but would merely record that the cases cited can be properly distinguished from those in this case and therefore, because of such dissimilarity, they can not claim support for the contention of the applicant.

8. ^{force} There is much ~~facts~~ in the contention of the respondent that the applicant cannot be allowed, out of turn promotion, as he belongs to an organised service and is admittedly transferable and has indeed been transferred from one post to another. We do not find any evidence of malafide or arbitrariness in the applicant's transfer as Campaign Officer. Similarly, we find that the respondents' reasons for giving the applicant promotion on the date he received it do not smell of any prejudice, bias or malafide against him.

9. No doubt a Kendriya Hindi Samittee made a strong recommendation for removing of disparity between the pay scale of language periodicals/news papers and English periodicals and a special committee appointed by the department of Languages have made out a strong case for removing of such a disparity and inter alia even singled out Bal Bharati for fixing of increased pay scale. The fixation of proper pay scale of different categories of staff is the function of expert bodies like Pay Commission. We do not propose to examine whether in principle or in policy, the allegations about bias against language news-papers has any basis for the decision regarding different pay scales for English periodicals and language periodicals published by the Ministry. Whether such a disparity exists because of any such bias or because of possibly wrong assessment or appreciation of the requirement of qualifications of the Editors or whether a certain degree of the operation of law of supply and demand have caused any such disparity and to what extent such disparity is legitimate are matters which could be relevant for the Govt. to consider either directly or with the assistance of expert bodies like the Pay Commission. However, until a government decision is reached changing the present ^{or} situation, we do not find that the applicant, has, made out any case for any discrimination against him individually or against Hindi journals.

10. For the above reason, we do not find that the applicant's application has any merit and reject the same. There shall however, be no order as to costs.

Yours S.7.91
(T.S. Oberoi)
Member (J)

Phewar
(P.H. Trivedi)
Vice Chairman