

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 1303/1987

DATE OF DECISION : 10.1.1992

SHRI C.S. BAJPAI

...APPLICANT

VS.

CHIEF SECRETARY & OTHERS

...RESPONDENTS

CO-RAM

SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

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

FOR THE APPLICANT

...SHRI UMESH MISHRA

FOR THE RESPONDENTS

...SHRI G.C. LALWANI

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGEMENT

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

The applicant is working as Projectionist in the Directorate of Family Welfare, Delhi Administration. The applicant has moved the application under Section 19 of the Administrative Tribunals Act, 1985 on being discriminated in the award of pay by the respondents alleging that respondents have fixed different pay scales in other departments of Delhi Administration for the same post of

Projectionist. The applicant claimed the following reliefs :-

- (a) To set aside the Recruitment Rules and specially column of pay scale and revised pay scale of the applicant at par with the Projectionist of Maulana Azad Medical College, i.e. Rs.425-600 with retrospective effect and direct the respondents to prescribe similar Recruitment Rules for the post of Projectionist in the department of the applicant as per the rule of the Department of Medical Institution (Delhi Admn.), (Maulana Azad Medical College);
- (b) To direct the respondents to pay the arrears and difference of the pay with retrospective effect since the day of appointment.

2. The applicant has alleged that he was appointed by way of recruitment through the Employment Exchange and his duty consists of arranging of film shows, operating machines, maintenance of public address equipment, generators and other audio-visuals equipment. Besides this, the applicant has to arrange exhibition on family planning which involve great deal of labour and responsibilities. It is stated that in other offices of Delhi Administration on the same post, the same work is being done by a team of staff like Field Publicity Officer (F.P.O.), Field Publicity Assistant (F.P.A.). The F.P.O. comes under the scale of Rs.650-1200 and Projectionist in the scale of Rs.425-700. It is also stated that the qualifications and experience are the same. It is further stated that the post of Projectionist is a technical one and requires more technical and academic knowledge than an L.D.C. whereas the applicant has been placed at par with L.D.C. The applicant has further stated that the post which he is holding is similar and parallel to the

14

Projectionist of other departments of Delhi Administration, i.e., Maulana Azad Medical College (Scale Rs.425-600), Directorate of Family Welfare (Scale Rs.260-400), Department of Directorate of Public Relation Projectionist (Scale Rs.425-700). The Recruitment Rules framed by the respondents, therefore, are discriminatory and dividing the post of Projectionist in two categories is bad in law. The applicant made several representations, but to no effect. It is stated that the applicant is performing the same duties as are being performed by the same Projectionists, who are working under the other departments of the Delhi Administration. The Projectionist in Maulana Azad Medical College is being paid in the pay scale of Rs.425-600. It is stated that the denial of equal scale of pay is an act of discrimination and violative of the fundamental rights guaranteed under the Articles of the Constitution of India. The applicant, therefore, claims that he should be placed in the pay scale of Rs.425-600 with retrospective effect.

3. The respondents contested the application and stated that the applicant was appointed in the pay scale of Rs.110-180 in the Directorate of Family Welfare, Delhi Administration and the scale of pay was revised to Rs.260-400 w.e.f. 1.1.1973 as per recommendation of Third Pay Commission. It is also

disputed that the applicant is not the sole worker and there is a team of employees including a Driver of the van and Cleaner and Officer-In-Charge of the van by designation-Publicity-cum-Education Officer. The applicant is under the direct supervision of the said officer. The Recruitment Rules under which the applicant was appointed are different from those applicable to Projectionist of other departments of Delhi Administration. The scale of pay of the applicant has been revised on the recommendation of the <sup>Central</sup> Fourth Pay Commission from Rs.260-400 to Rs.950-1500. The Recruitment Rules, therefore, are different, but the post on which the applicant has been posted as Projectionist as any person without experience can be recruited as Projectionist whereas in the other departments for a similar post, experience from three to five years is required. In the case of Projectionist in Maulana Azad Medical College, the experience for 3 years is required while in the Recruitment Rules of Directorate of Public Administration, Delhi experience of 5 years is required. In view of this fact, it is stated that there is no discrimination meted out to the applicant and further the duties and responsibilities of the Projectionist in other departments are also not similar to that of the applicant.

4. We have heard the learned counsel for the parties at length and have gone through the record of the case.

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 man and woman, though these principles are not enforceable at any court, but they are intended to be implemented by the state of its own accord as to promote the welfare of the people. Indeed Article 37 of the Constitution provides, inter-alia, that it shall be the duty of the state to comply with these principles in making laws. It is, however, argued by the learned counsel for the applicant that the 3rd Central and 4th Pay Commission only considered the revision of scales, but they did not consider inequality of scales for the same post. In the Directorate of Family Welfare, the 4th Pay Commission has granted the scale of Rs950-1500 to the Projectionist, i.e., the case of the applicant. On the same post in the Directorate of Information and Publicity, the 4th Pay Commission has provided the scale of Rs.1400-2300 and in Maulana Azad Medical College Hospital, Medical Institution, the scale provided is Rs.1400-2300. However, we have made a comparative study of the various Recruitment Rules, which are on record. In the case of Directorate of Family Welfare to which the applicant belongs, the essential qualifications for recruitment to the post

17

of Projectionist are matriculation having cinema operator's licence in 35 MM and familiarity with the operation of 16 MM Projector, Petrol Driver Sets and other electronic visual aides used in mobile vans. In the case of Projectionist in the medical institutes under Delhi Administration, the essential qualifications are matriculation, certificate and licence of 35 MM Projector and knowledge of Projector petrol driver sets and visual and sound equipment and should have at least 3 years' experience. In the case of Directorate of Public Relations, for the post of Projectionist the essential qualifications are matriculation, cinema operator's licence in 35 MM and familiarity with the operation of 16 MM Projector, public address equipment, tapewire recorders, petrol driven generating aides used in the mobile cinema vans and 5 years' experience in the operation of equipment referred to above either in State or Central publicity unit or in a well established workshop or factory and the desirable qualifications are knowledge of more than one regional languages, second class Wireman's licence and motor driving licence. Thus it is evident from the above that the Recruitment Rules for the Projectionist in the Directorate of Family Welfare do not prescribe in essential and desirable qualifications, the same criterian as has been provided in the Recruitment Rules in the medical institution under Delhi Administration and in Directorate of Public Relations. It is, therefore, evident that a person without experience and without

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having knowledge of regional languages etc. may get entry into service in the Directorate of Family Welfare as Projectionist, while the same person cannot be appointed to a similar post of Projectionist in the other two sister departments. It is because of this fact that the applicant has also desired that the Recruitment Rules be modified and at least regarding pay scales. In K.S. Vohra Vs. State of Gujarat, 1988 Labour and Industrial Cases page-43, it has been held that the framing of the recruitment regulations is prerogative of the employer and no grievance can be made even if the prospects of promotion in future of some employees are prejudiced thereby. The Government has, therefore, sovereign right to frame the Recruitment Rules and at the same time, the challenge to the Recruitment Rules must show that they are arbitrary and violative of Articles 14 and 16 of the Constitution of India. However, in the present case, we find that the Recruitment Rules for the post of Projectionist in the different disciplines of Delhi Administration are different.

5. The counsel for the applicant has cited the case of Randhir Singh Vs. UOI, reported in AIR 1982 SC p-879. In the case of Randhir Singh also, the Hon'ble Supreme Court held that where all relevant considerations are the same, persons holding identical posts may not be treated

19

differently in the matter of the pay merely because they belong to different departments. In the present case, the learned counsel for the applicant has referred to the various duties performed by the applicant in the discharge of the functions as Projectionist. But the quality of performance has also to be adjudged on the basis of the minimum essential and desirable qualification, which has been elaborately laid down in the Recruitment Rules. When once it is found that the Recruitment Rules are not in any way arbitrary and that the Recruitment Rules for other departments of Delhi Administration in the same post are materially different and are not at all at par. There cannot be any discrimination if different pay scales are prescribed, though the post may be designated by the same name. In fact, the job of Projectionist in all the different departments of Delhi Administration is only to discharge the function of Projectionist, but the level of capability exercised by each of them in their respective departments shall differ according to their various capabilities gained by them in the essential and desirable qualifications prescribed under the Recruitment Rules. In the case of State of U.P. Vs. J.P. Chaurasia, AIR 1989 SC page-19, the Hon'ble Supreme Court considered the case of Bench Secretary I and Bench Secretary II in the High Court of Allahabad. The Hon'ble High Court of Allahabad has granted them the relief of equal pay, but

the Hon'ble Supreme Court held that two pay scales in the same cadre of persons performing same or similar duties permissible as based on merit-cum-seniority. It has been further held that equation of post and pay is domain of the expert bodies and the Court in its own <sup>not</sup> can't take that function. For getting similar scales of pay, the entry to the service must be based on the similar and identical rules.

6. The learned counsel for the applicant has referred to the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, reported in AIR 1990 SC page-371. However, in this reported case, the educational qualifications prescribed were said to have been achieved by a person by the experience he has earned. The learned counsel has referred to para-6 of the reports regarding his equal pay being given to those having experience and not having the prescribed educational qualifications, but the present case materially differs on the basis of the Recruitment Rules. The learned counsel for the applicant has also referred to the case of Bhagwan Dass Vs. State of Haryana reported in AIR 1987 SC page-2049. In the above reported case, the Hon'ble Supreme Court held that the person ~~doing~~ performing similar work cannot be denied equal pay on the ground that the mode of recruitment was different and secondly casual or temporary employees performing the same and similar duties and functions as

permanent employees and so they were entitled to the same pay as was given to regular and permanent employees.

The facts of this case also are not applicable to the present case. In order to apply the principle of equal pay for equal work, it has to be established as a fact that the persons are recruited in a similar manner with the same qualifications so that the quality of work performed by them can be said to be the same. The learned counsel has also referred to a number of other cases, particularly that of P. Savita Vs. UOI, AIR 1985 SC 1124. But in that case, there was illogical differentiation between Senior and Junior Draftsman, so the principle of equal pay for equal work was applied. Similarly the learned counsel has referred to the case of U.P. Rajya Sahkari Bhoomi Vikas Bank Ltd. Vs. its workmen, AIR 1990 SC 495. The facts of this case are also not akin to the present case because the Recruitment Rules in the present case for the post with which the applicant seeks similarity are different while it was not so in the reported case.

7. In the case of Umesh Chand Gupta and Ors. Vs. ONGC & Ors. reported in 1990 (3) SLJ page-28, the Hon'ble Supreme Court held that nature of work and responsibilities of the post are matters to be evaluated by the management and not for

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the Court to determine relying upon the averments in the affidavit of interested parties. The case of State of U.P. Vs. J.P. Chaurasia has been referred to and the para-18 of the said judgement is quoted below :-

"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 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."

Further it has been observed in para-6 as follows :-

"There is thus a distinction between Technicians Grade II and Grade III. The Technicians Grade II appeal to the better qualified than Technicians Grade III. The nature of work of Technicians Grade II and Grade III may be the same but there may be qualitative difference in the performance. It is for the management to evaluate and not for the court to determine."

8. In view of the above discussion, we find that there is no case of the applicant for getting equal pay with that of the Projectionists in Maulana Azad Medical College and in the Department of Directorate of Public Relation and the application, therefore, is devoid of merits and is dismissed leaving the parties to bear their own costs.

  
(J.P. SHARMA)  
MEMBER (J) 10.1.92

  
(I.K. RASGOTRA)  
MEMBER (A) 11.1.92