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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1534/1987. DATE OF DECISION: *April 19, 1991*

Chaman Lal & Others Applicants.

V/s.

Union of India Respondents.

CORAM: Hon'ble Mr.P.C. Jain, Member (A).
 Hon'ble Mr.J.P. Sharma, Member (J).

Shri R.K. Kamal, counsel for the applicants.
Mrs. Raj Kumari Chopra, counsel for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether their lordships wish to see the fair copy of the judgment? *m.*
4. Whether to be circulated to all Benches of the Tribunal? *no.*

J.P. Sharma
(J.P. SHARMA)
Member(J)

P.C. Jain
(P.C. JAIN)
Member(A)

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(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A)).

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicants, who are employed as Mate Motor Pump Attendants in the office of Commander Works Engineers / G.E. (North) / G.E. (South), Air Force, Palam, Delhi Cantt., are aggrieved by their appointment to the post of Mate Motor Pump Attendant (for short, Mate MPA) in the pay scale of Rs.210 - 290 on promotion instead of they being appointed to the post of Motor Pump Attendant (for short, MPA) in the pay scale of Rs.260-400, for which post they were/declared successful in the promotional trade test held on different dates. They have prayed for the following reliefs: -

- " i) The amended order issued by the respondent (copy not given to the applicants) to the controlling officers of the applicants to the effect to deem the applicants having passed the trade test only for the semi-skilled category of Mate M.P.As be quashed and declared illegal null and void ab initio.
 - ii) The respondent be directed to promote the applicants to the skilled post of M.P.As (Grade 260-400) for which they were declared to have passed the Trade Test with effect from the dates of passing of the Trade Test.
 - iii) The respondents be directed to pay all arrears arising out of the difference of pay of Mate M.P.A. and M.P.A. with retrospective effect from the date of passing the Trade Test along with market rate of interest at 15% per annum.
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iv) Any other relief that the Hon. Tribunal may grant to extend substantial justice to the applicants. "

2. The facts of the case, in brief, are as under: -

The applicants, eight in number, who were earlier working as Chowkidars / Safaiwala in the units of CWE / GE (North) / GE (South), Air Force, Palam, Delhi Cantt., were allowed to appear in a Departmental Promotional Trade Test held on different dates and they were declared successful in the trade test for the ^{post designated as} 'M.P.A.' vide Annexure A-1 to the OA. They were, however, promoted to the post of Mate MPA in the scale of Rs.210-290. The grievance of the applicants is that although they were declared to have passed the trade test for the post of M.P.A., they have been appointed to the post of Mate M.P.A. by an amendment without giving them any opportunity to be heard and as such, the amended orders are illegal, arbitrary, inequitable and unreasonable inasmuch the post of MPA carried the pay scale of Rs.260-400 whereas they have been promoted to the post of Mate MPA in the pay scale of Rs.210-290. According to the applicants, the amended orders violate the law of the land and infringe Articles 14 and 16 of the Constitution and that it amounts to extraction of extra work in quality without corresponding remuneration offending Article 23 of the Constitution. They allege that at the time of their passing the trade test for the skilled category of MPA, there was no post of Mate MPA and, as such, their selection for this semi-skilled post of Mate MPA with retrospective effect is invalid. Their representation dated 20.9.86 (Annexure A-2 to the O.A) is stated to be not replied to. The respondents have contested the O.A. by filing a written reply. They have filed a copy of letter dated 11th May, 1983 (Annexure I to the counter) issued by the Ministry of Defence, Government of India, to the Chief of the Army Staff, New Delhi, giving the various categories of workers in MES and their scales of pay. According to the respondents, the

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post of MPA was a semi-skilled category and carried the pay scale of Rs.210-290 and its feeder category was from unskilled categories of Mazdoors/Chowkidars/Safaiwala. The letter of the Ministry of Defence dated 11.5.1983 (supra) categorised the post of MPA as skilled category in the pay scale of Rs.260-400 and the feeder categories from the semi-skilled grade of Rs.210-290 were to be identified by the Head of the Department. Engineer-in-Chief vide letter dated 13.11.84 (Annexure II to the counter) identified the category of Mate MPA as a feeder grade for the post of MPA. The Engineer-in-Chief issued directions vide letter dated 17.6.1985 (Annexure III) that Mazdoors/Chowkidars/Safaiwala who had qualified in the trade test for MPA could not be promoted to this post due to its upgradation to skilled pay scale and they would be deemed to have passed trade test for Mate MPA and would be promoted to the semi-skilled pay scale of Rs.210-290. On completion of 3 years' service in the semi-skilled grade of Rs.210-290 of Mate MPA, they would become eligible for promotion to skilled grade of MPA in the scale of Rs.260-400 subject to passing of trade test and selection by DPC. In the light of these directives, the applicants were promoted to Mate MPA during July/August, 1985 in the semi-skilled pay scale of Rs.210-290 as they could not be promoted straightway from unskilled pay scale to skilled pay scale. According to the respondents, the applicants passed the trade/^{test} of MPA on the basis of syllabus of MPA in the semi-skilled pay scale of Rs.210-290 and as such, no injustice has been done to them and there is no violation of the law. In the rejoinder, the applicants have reiterated their points as given in the O.A. by emphasising the fact that the trade test for the post of M.P.A. was held in December, 1984 and the results were declared in March, 1985 i.e., long after the Ministry of Defence letter dated 11.5.1983 (Annexure I to the counter) and at the time

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of declaration of their results, the post of M.P.A. had already been declared as a 'skilled' post and to downgrade them subsequently to a lower post was in violation of their legal rights. They also claim that they are performing the identical duties and functions as are performed by the M.P.A. who are placed in the scale of Rs.260-400 and granting them a lower scale is in violation of the constitutional right of 'equal pay for equal work'.

3. We have gone through the record of the case and have heard the learned counsel for the parties.

4. The admitted facts of the case are that at the time the applicants appeared for the test, the designation of the post was M.P.A. The result-sheets also show the Trade Test as 'M.P.A.', but there is no document on the record to indicate that this post was a skilled post in the pay scale of Rs.260-400, nor does the result-sheet state so. On the other hand, the communication of the Ministry of Defence dated 11.5.1983 i.e., much before the test was conducted, distinctly brings five categories of posts, viz., Unskilled, Semi-skilled, Skilled, Highly Skilled Grade^{II} and Highly Skilled Grade I. Para 1(iv) further says:

"In respect of jobs, which carried semi-skilled grades before the present fitments but have been allotted skilled grade of Rs.260-400 on the basis of the evaluation, feeder grades/trades in the semi-skilled grade of Rs.210-290 may be identified by you, if this has not already been done under the present Recruitment Rules. In exceptional cases, where such identification of feeder grades/trades is not may make direct recruitment at the skilled level to such jobs. The qualifications for these jobs should be analogous to the qualifications laid down for skilled jobs....."

Extract of Annexure I to the aforesaid letter shows that the scale of pay for the post of Motor Pump Attendant had been revised from Rs.210-290 to Rs.260-400. Consequent to the said communication of the Ministry of Defence, the letter dated 13.11.1984 issued by the E-in-C's Br. AHQ (Annexure II to the counter), which was also issued prior to the trade test

of the applicants, makes it abundantly clear that Mazdoors/ chowkidars/safaiwalas are not now eligible for promotion to the post of MPA. Even those who had already passed the trade test for MPA were deemed to have qualified for the post of Mate i.e., the semi-skilled post in which MPA earlier was fitted prior to upgradation. The sequence of facts go to show that the revised scale of pay, viz., Rs.260-400, was introduced for the skilled category, leaving it without ambiguity that chowkidars/safaiwalas were feeder posts for Mate MPA, which was to be treated as a semi-skilled category in the pay scale of Rs.210-290. Thus, the revision of pay scale cannot be extracted to apply independent of the changes introduced in the overall fitment of the categories. May be, due to some communication gap, the applicants carried an illusion that the pay scale of MPA had been revised to Rs.260-400, but they had to follow it with the scheme as a whole. The applicants have not produced any document to show that they were actually promoted to the post of MPA in the revised scale of Rs.260-400 and were subsequently demoted to the scale of Rs.210-290. In the circumstances, we cannot hold that the applicants had acquired a prescriptive right to hold the post of MPA in the scale of Rs.260-400.

5. The learned counsel for the applicants contended that on the basis of the doctrine of 'equal pay for equal work' as enshrined in Article 39(d) read with Article 14 of the Constitution of India, the applicants cannot be denied the pay scale of the post of MPA with effect from the date they were appointed as Mate MPA. He cited the judgments of the Hon'ble Supreme Court in the case of RANDHIR SINGH Vs. UOI (A.I.R. 1982 SC 879) and in the case of P. SAVITA Vs. UOI and OTHERS (1985(3) SLR SC 29).

6. We have carefully considered the above contention of the applicants and are of the view that the doctrine of

'equal pay for equal work' is not applicable to the facts of this case. The applicants were working in the pay scale of Rs.196 - 232 and after they qualified in the trade test, were appointed to the post of Mate MPA in the scale of Rs.210 - 290. As they were not appointed to the pay scale of Rs.260 - 400, they are not entitled to pay in that scale. In Randhir Singh's case (supra), it was held:

"We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments."

As regards the contention of identical duties being performed by the Mate MPA and MPA, the following observation of the Hon'ble Supreme Court in Randhir Singh's case (supra) may be reproduced:

"It is well known that there can be and there are different grades in a service with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Art. 14 if sought to be applied to them."

7. In P. Savita's case (supra), Senior Draftsmen in the Ministry of Defence Production doing the same work and discharging the same functions and duties were stated to have been classified in two groups and the Pay Commission had recommended higher pay scale for one group not on any merit-cum-seniority basis but only on seniority-cum-fitness basis. In that case, the Hon'ble Supreme Court held that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently. Thus, the facts of both the cases cited by the learned counsel for the applicants

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are different from the ones in the instant case and, therefore, the cited cases are not relevant.

8. On the other hand, learned counsel for the respondents cited the following cases in support of their case: -

- (1) K. Jagannathan and Others v. UOI & Others - (SLJ 1990 (2) (CAT) May Part p. 152).
- (2) Mew Ram Kanojia v. All India Institute of Medical Sciences and Others (SLJ 1990 (1) April Part p. 161).
- (3) Shri S. Dayananda and Others V. The State of Karnataka and Others (SLJ 1990 (1) (CAT) p. 514).

In Jagannathan's case (supra), the Madras Bench of the CAT referred to the case of Federation of All India Customs and Central Excise Stenographers v. Union of India (AIR 1988 SC 1291), in which the Hon'ble Supreme Court held that there cannot always be a mathematical formula for comparing duties and responsibilities of different posts. Certain amount of value judgment of the administrative authorities concerned is inevitable. That cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on mala fides in law or in fact. In Mew Ram Kanojia's case (supra), it was held that "The principle of 'Equal Pay for Equal Work' is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay." (emphasis supplied). In the case before us, the applicants who were appointed as Mate MPA held a rank different from those who held the post of MPA and, as such, they cannot be treated to be equal in all respects. In the aforecited case of Mew Ram Kanojia, it was further held that "Even if the duties and functions are of similar nature but if the educational

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qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of 'Equal Pay for Equal Work' would not apply." As we have already stated above, 3 years' service in the grade of the post of Mate MPA is an essential qualification for eligibility for promotion to the post of MPA. Moreover, while it is necessary to be a Matriculate for appointment as MPA as per an averment made by the respondents in their counter-affidavit, it is not so for the post of Mate MPA. In Shri S. Dayananda's case (supra), the Karnataka Administrative Tribunal, in the matter of prescribing qualifications for the posts, held that the department is the best judge and that Tribunal cannot interfere. From the foregoing discussion, it is clear that the doctrine of 'Equal Pay for Equal Work' is not applicable to the case of the applicants.

9. In the light of the above discussion, we hold that there is no merit in the O.A. and the same is hereby dismissed with costs on parties.

J.P. Sharma
(J.P. SHARMA)
Member (J) 19.4.91

P.C. Jain
(P.C. JAIN)
Member(A)