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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. 1712/87

Date of decision 14.1.92.

Sh.Rawti Parshad &
Others

Applicants.

Versus

Union of India
& Others

Respondents.

Sh.Umesh Mishra,

Counsel for the applicant.

None for the respondents.

CORAM:

The Hon'ble Justice Ram Pal Singh, Vice Chairman(J).
The Hon'ble Sh.P.S.Habeeb Mohamed, Member(A).

J U D G E M E N T

(Delivered by Hon'ble Sh.P.S.Habeeb Mohamed, Member(A)).

In this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, Rawti Parshad and 20 others, who are designated as Miscellaneous Drivers, under the Delhi Milk Scheme, claim that they are doing the same duties as the Heavy Vehicle Drivers, also under the same scheme with the same educational qualifications but get a lower scale of pay and this amounts to discrimination within the meaning of Article 14 of the Constitution, apart from non-payment of equal pay for equal work and have prayed for issue of directions by the Tribunal to the respondents to give the same scale of pay i.e. Rs. 1150 - 1500 to them, also the other benefits and costs of the application. In support of their claims, they have stated in their application, that prior to the recommendation of the Third Pay Commission, the pay scale of both categories of Drivers was the same i.e. Rs. 110 - 139 but the Third Pay Commission recommended for the Miscellaneous Drivers pay scale of Rs.260 - 350, while

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the scale of Heavy Vehicle Drivers was recommended to be upgraded to Rs.320 - 400, the discrepancy^a, arising out of the wrong recommendations of the Delhi Milk Scheme, that the discrepancy^a is persisting and has to be rectified. In supporting the grounds as stated in the application, the learned counsel for the applicants, has drawn pointed attention to the recommendations of the Chairman of the Delhi Milk Scheme, as contained in his letter No.22-23/83.Estt. Spl.(Vol.II) dated 4/9/86, addressed to the Ministry of Agriculture, wherein it has been stated "The Miscellaneous Drivers", who drive the same vehicles as that of Heavy Vehicles Drivers are Drivers for all practical purposes, would have to be allowed the scales on par with Heavy Vehicle Drivers'. There is no justification for fixing a lower pay scale for them as the Pay Commission is understood to have done - would therefore strongly recommend, that they may be allowed the same salary as that of Heavy Vehicle Drivers' i.e. the scale of Rs.1150 - 1500 in place of Rs.950 - 1400 understood to have been recommended for them". This recommendation was in the context of the Fourth Pay Commission' report.

2. The respondents, in their reply, apart from taking the plea of limitation have stated that the qualifications for the post of Heavy Vehicle Drivers are different and higher than those^a, presented^{cribed} for the Miscellaneous Vehicle Drivers and the recruitment rules contain the provision that 50% of the Heavy Vehicle Drivers' posts are to be filled up by direct

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recruitment and 50% by promotion from Miscellaneous Drivers and that the standard of education and experience is different in the ^{two} categories of the posts, and that there is therefore, neither the ^{un-} equal pay ^{for} equal work ^{of} any discrimination.// We find, after perusal of the documents and hearing the learned counsel for the applicants that the grievance of the applicants was a subsisting one on the date of the application and that no cut off date could be given, after which the service grievance would become hit by limitation and we, therefore, *disallow* the plea of limitation taken by the respondents. Apart from the averments in the application and the materials referred to earlier, we have no materials to presume that the duties performed by the Miscellaneous Drivers and the Heavy Vehicle Drivers are the same - In fact, the recruitment rules for the Heavy Vehicle Drivers issued in the notification of the Department of Agriculture dated 7.4.76 shows that the candidates for the post must have a pass in the middle school standard, must possess a Heavy Vehicles Driving License, must have experience of driving Heavy Vehicles for atleast three years and pass a departmental test in driving to adjudge suitability for the post - and while 50% of the posts are to be filled by direct recruitment, 50% of the posts are to be filled up by Miscellaneous Drivers with three years' service in the grade, subject to passing simple authentic and literacy test, while for Miscellaneous Duty Drivers under the Delhi Milk Scheme (Rules notified vide notification No.18-28/71 - LDI dated 7.4.76 by the same Ministry) shows that the essential qualification

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are: (1) primary standard pass, (2) atleast two years' experience in automobile workshop, (3) possession of valid licence for driving heavy vehicles and passing a departmental test - to adjudge suitability.

3. It is clear that the possession of a valid license for driving heavy vehicles, though a common fact, in both cases, does not make the qualifications equal. There is a promotion quota for the Miscellaneous Duty Vehicle Drivers. A recommendation by the Chairman of the Delhi Milk Scheme is still a recommendation and the appropriate decision had to be taken by the concerned Ministry. The decision of the Hon'ble Supreme Court in State of U.P. Versus J.P. Chaurasia would be relevant in this context: (AIR 1989-SC-19)

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 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".

4. We do not find that any extraneous considerations have gone into the fixing of the pay scales. We are, therefore, unable to give any relief to the applicants. However, they may file a fresh representation to the respondents with all details and the



respondents may dispose of the same with the utmost expedition possible.

The application is disposed of accordingly with no order as to costs.

(P.S.HABEEB MOHAMED)
MEMBER(A)

(RAM PAL SINGH)

VICE CHAIRMAN(J)

14.1.92