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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A.328/87.

DATE OF DECISION 20-12-90

Akhil Bhartiya Akashvani Chaturth
Shreni Karmchari Sangh & Another

... APPLICANTS

Shri Jog Singh & Shri R. Tikku

... Counsel for the
Applicants.

vs.

Union of India & Others

... RESPONDENTS

Shri K. C. Mittal

... Counsel for the
Respondents

CORAM : HON'BLE MR. P. C. JAIN, MEMBER (A)
HON'BLE MR. J. P. SHARMA, MEMBER (J)

1. Whether to be referred to the Reporter ? *yes*
2. Whether Reporters of local papers may
be allowed to see the judgment ? *yes*
3. Whether their lordships wish to see the
fair copy of the Judgment ? *NA*
4. To be circulated to other Benches of
the Tribunal ? *NA*

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

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

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Regn. No. O.A. 328/87. DATE OF DECISION: ^{December 20,} ~~November~~, 1990.

Akhil Bhartiya Akashvani Chaturth Shreni Karamchari Sangh & Another	APPLICANTS.
Shri Jog Singh & Shri R. Tikku	Counsel for the Applicants.
	V/s.	
Union of India & Others	RESPONDENTS.
Shri K.C. Mittal	Counsel for the Respondents.

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

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

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicants, who are representative organisations of Security Guards working in All India Radio and Doordarshan prayed for a number of reliefs. As per the Tribunal's order dated 3.7.1987, the application was admitted only in respect of relief No.1, which is as under: -

"to direct the Respondents to place the Security Guards employed in all India Radio and Doordarshan in the pay scale of 210 - 270 which is commensurate with the duties and responsibilities performed by them at par with their counterparts in CISF, SSF and other organisations under the Government of India;".

2. The grievance of the applicants is that although they are performing similar and identical work as security guards working in various other organisations of Respondent No.1 within the Ministry of Information and Broadcasting as well as other Ministries and Central Government security organisations, they have been discriminated for purposes of pay scale. The pre-revised scale of the post of

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the applicants employed as Security Guard in AIR and Doordarshan was Rs.196-232, which on the recommendations of the Fourth Pay Commission was revised to Rs.750-940. The Security Guards employed in other Ministries of the Government of India and industrial organisations, according to the applicants, had been in higher scales between Rs.200 - 250 to Rs.210-270. Even the studio guards employed by the respondents in AIR and Doordarshan were placed in a higher scale of Rs.200 - 250, which has since been revised to Rs.775-1025. The pay scale of Rs.210-270 has been revised to Rs.800 - 1150 on the recommendations of the Fourth Pay Commission. In support of their claim that their duties and responsibilities are the same as are in the case of Security Guards in other Ministries of the Government of India, and in SSF and CISF, the applicants have filed a copy of the appointment letter dated 29.3.1982 and a copy of Office Memo dated 21.1.1986 issued by the respondents (Annexures A-9 and A-10). The plea of the applicants, in short, is that they are being equated with Chowkidars, although they have been performing the duties of Security Guards, which are of greater responsibility, particularly in Radio Stations and Doordarshan Centres, which are located in remote centres. They also claim to be trained personnel being ex-servicemen unlike the security guards in other organisations who do not have any formal training. They have also averred that in spite of the fact that the respondents have been making all promises and assurances, the anomaly in the pay scales has not been removed.

3. The case of the respondents is that the post of Security Guard was designated as Chowkidar until September, 1976. The designation was changed to Security Guard thereafter on the demand of the Security Guards and on the condition that there would be no financial implications

involved. The functions of Security Guards are the functions which the lowest category of Group 'D' staff in the pay scale of Rs.750-940 perform in so far as the stress and strain or the hardwork involved is concerned. Further, the requirement of the posts in respect of educational qualifications etc. was 'Nil' from 1967 to 1972. During that period, the only requirement for the post was that the candidate should preferably be an ex-serviceman. However, in 1972, the following qualifications were prescribed:

"Civil Qualifications: 8th Standard passed ex-servicemen who do not have the civil education but have passed the second class army certificate of education will be eligible.

Other Qualifications: (i) must be either ex-serviceman having minimum of six years in the Infantry Artillery or Paratroops and "Exemplary" or "Very Good" character assessment in their Army Discharge Certificate.

(ii) Ex-police personnel having minimum of six years service in the Central or State Police Service and a good record of police service. "

In 1976, the qualifications for this category of employees were further changed and prescribed as follows

"(i) Ex-servicemen who have put in not less than 3 years of service in the armed forces and who got 'Very good' character assessment in his army discharge certificate.

OR

(ii) Ex-Police personnel who has put in not less than 3 years of service in the Central or State Police Forces and who has got 'Very good' character assessment in his discharge certificate. "

According to the respondents, the qualifications prescribed for the post of Security Guard are similar to those prescribed generally for the group 'D' posts in the pay scale of Rs.750-940 and there is no justification whatsoever

for any higher pay scale for the Security Guards. No comparison is called for with other categories of staff in other Ministries/departments as such organisation has its own posts with their requirements for recruitments and functions.

5. For purposes of parity the applicants have specifically referred in the O.A. to the posts in the Secretariat Security Force and in the Central Industrial Security Force. In their representations annexed with the O.A. they had also referred to BSF and CRPF. It may be stated here that BSF, CRPF and CISF come in the category of the Armed Forces of the Union and the member of such forces who may be performing guard duties holds the designation of a Constable, and as a Constable he has different functions and duties as also responsibilities which cannot be compared with the Security Guard in the All India Radio and the Doordarshan establishments particularly when there is a separate category of Studio Guard in these organisations. As regards the comparison with the members of the Secretariat Security Forces, the learned counsel for the applicants gave a photostat copy allegedly containing the duties of Sipahi. It is non-attested/unauthenticated copy. However, even a perusal of these duties and the duties of the applicants, as alleged by them to be contained in Annexure A-10 to the O.A., shows that these are neither the same nor similar. ^{In the} Annexure A-10 which is an internal circular dated 21.1.1986 the duties of the Security Guards posted at various gates have been indicated. These duties mainly comprise of checking the entry pass, not allowing certain vehicles to enter the gates, and to see that the scooters and brief

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case etc. do not contain any objectionable article. These duties cannot be said to be either of a complex nature or in any way significantly different from the duties normally assigned to watch and ward staff. The respondents have contended in their counter affidavit that the functions of the applicant Security Guards are similar to the functions which the lowest category in the Group-D in the pay scale of Rs.750-940/- perform in so far as the stress and strain or the hard work involved is concerned.

6. It may also be noted, as would be seen from the qualifications prescribed from time to time that the qualifications prescribed for recruitment to the post as Security Guard in the respondent organisations have in fact been reduced in 1976 when the designation of the post was changed from Chowkidar to Security Guard. There is nothing before us to show that since 1976 when the aforesaid change in designation was carried out, new posts of Chowkidars were created for carrying out the duties which the applicants discharged before the change in the designation. Thus, there is nothing before us to show that the change in designation has resulted in either quantitative or qualitative change in the duties performed by the members of the applicant Associations. This is of vital significance in view of the contention of the applicants that they were not a party to the condition imposed by the Government while changing the designation from Chowkidar to Security Guard.

7. It cannot be a matter of dispute that the revised scale of Rs.750-940/- given to the applicants with effect from 1.1.1986 is as per the recommendation of the Fourth Pay Commission. The applicants themselves have admitted that they had raised the issue of their pay scale with the Fourth Pay Commission vide letter of January, 1985 (Annexure A-5) and letter dated 14.9.1985 (Annexure A-6).

It has also to be accepted that the matter of revision of scale of pay of the applicants was in the purview of the Fourth Pay Commission. The mere fact that the Commission did not accept the claim of the applicants or that there is no specific para in the Report of the Commission ^{on this point} cannot be construed to ^{mean} ~~mean~~ that this was not considered by them. The Commission was fully aware of the doctrine of 'equal pay for equal work' as is clear from their Report in Chapter 7 on 'Pay Determination.' They have also made their recommendation on the Secretariat Security Organisation in para 10.254 on page 157 of Part-I of their Report. Here we may also mention about the post of Studio Guard. The pre revised scale for this post was Rs.200-250/-. The educational and other qualifications prescribed are "middle school standard, well built, active and able to speak and understand English." This is a promotion post for ^{itself} Peons. The post of Studio Guard ^{itself} is a feeder post for promotion to the post of Studio Attendant in the pre-revised scale of Rs.200-270/-. This is being mentioned as the applicants have stated that their duties are more onerous than that of Studio Guard, and as they have claimed the pre-revised scale of Rs.210-270/-. The post of Studio Attendant in the pre revised scale of Rs.210-270/- is higher by two stages than the post of Security Guard in the pre-revised scale of Rs.196-232/-. It hardly needs to be stated that the pay structure is like a pyramid and any tinkering with it in the process of judicial review may create havoc with the pay ^{structure} ~~scale~~ which itself is evolved after taking into account, inter alia, internal ~~relativities~~ including vertical and horizontal relativities. An expert body like the Pay Commission is the appropriate forum for determining equation of posts and equation of pay. The Supreme Court

in the case of State of U.P. and others vs. J. P. Chaurasia and ors. : AIR 1989 SC 19 observed as below :

"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."

On the question whether two posts are equal or should carry equal pay, it was observed as below :

"The answer to the question depends upon several factors. It does not just depend upon either the nature or work or volume of work... Primarily it requires among others, evaluation of duties and responsibilities of the respective post. 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 the work may be the same, but the quality may be different that cannot be determined by relying upon averments in affidavits of interested parties."

8. Learned counsel for the applicants cited the following judgments in support of his case :

- (i) M/s Mackinnon Mackenzie & Co. Ltd. vs. Audrey D'Costa : AIR 1987 SC 1281;
- (ii) Bhagwati Prasad vs. Delhi State Mineral Development Corpn. : AIR 1990 SC 371;
- (iii) Randhir Singh vs. Union of India : AIR 1982 SC 879;
- (iv) Surinder Singh vs. Engineer-in-Chief, CPWD : (1986) 1 SCC 639;
- (v) Dharendra Chamoli vs. State of U.P. : (1986) 1 SCC 637;
- (vi) Daily Rated Casual Labour, P&T Deptt. vs. Union of India : AIR 1987 SC 2342;
- (vii) U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd. vs. Its Workmen : Judgments Today 1989(4) SC 306;
- (viii) Supreme Court Employees Welfare Association vs. Union of India & Ors. : AIR 1990 SC 334.

We have carefully considered these citations. It is not in dispute that the abstract doctrine of 'equal pay for equal work' as envisaged by Article 39 (d) of the Constitution and which in itself is not enforceable in view of the

provisions of Article 37 of the Constitution, ceases to be an abstract doctrine when a discrimination on account of unequal pay is brought within the meaning of Article 14 of the Constitution. It also cannot be in dispute that mere nomenclature of the post cannot be the determining factor for claiming or granting equal pay. Similarly, it is not necessary that the work performed in the two cases should be identical or same; even if it is similar in essential particulars, the principle of 'equal pay for equal work' would be attracted. ^{However,} Even in the case of Randhir Singh (Supra) the Supreme Court held that "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." Thus one has to see not only nomenclature of the post but all other relevant factors which would include the level of the post in the hierarchy, the level of responsibilities, qualifications prescribed for recruitment etc. The applicants did not annex with their application the relevant material in respect of allegedly similar posts with which they seek parity. As such, it is neither appropriate nor possible for us to sit in judgment over the recommendations of the Fourth Pay Commission.

9. In the case of Randhir Singh (supra) the respondents had admitted in their counter affidavit that the duties of the driver-Constables of the Delhi Police were onerous. . . There is no such admission in the case before us. Again, in Randhir Singh's case the respondents took the plea that the two posts belong to different departments and there was no

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other reason pointed out for different remuneration.

In the case before us the respondents have specifically asserted that in the matter of stress and hard work the duties of the post of the applicants were equal to the lowest post in Group-IV. We have also mentioned above that there has been no quantitative or qualitative change in the duties of the post of the applicants after its designation was changed from Chowkidar to Security Guard.

10. In the case of Surinder Singh, Dhirendra Chamoli, Daily Rated Casual Labour of the P & T Department and Bhagwati Prasad (supra) the issue was of difference in pay to daily rated employees vis-a-vis regularly employed class-IV employees and the classification made by the respondents in those cases on that account was held to be irrationale and untenable and as there was no difference in the duties performed by the two types of employees, the principle of 'equal pay for equal work' was applied. Similarly, in the case of U.P. Rajya Sahkari Bhoomi Vikas Bank Ltd. (supra) classification between junior and senior groups for purposes of pay was held to be untenable as the same work was done by both. In the case of Supreme Court Employees Welfare Association (supra) it was held that "if any classification is made relating to the pay-scales and such classification is unreasonable and/or if unequal pay is based on no classification, ^{then} Article 14 will at once be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work." In M/s Mackinnon Mackenzie (supra) it was held that there was no material difference between the work performed by Lady Confidential Stenographers and Male Stenographers and as such the provisions of Equal Remuneration Act, 1976 (25 of 1976) were found to be applicable.

11. In the light of the foregoing discussion we are of the view that on the basis of material on record and the oral submissions made before us, we are not in a position to hold that the Security Guards in the All India Radio and Doordarshan Kendras are equally placed with those with whom they seek parity in the matter of scale of pay and further that the duties performed by them are same or similar to those performed by the Constables in the central police organisations such as BSF, CRPF, CISF or with the Sipahi in the Secretariat Security Forces. We also do not find that the recommendation of the Fourth Pay Commission for the revised scale to the applicants with effect from 1.1.1986 is based on any extraneous considerations; there is neither any averment to that effect nor any material has been placed before us to hold otherwise. As such the application is devoid of merits and is accordingly dismissed with cost on parties.

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

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