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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: N.DELHI.

REGN.NO.O.A.922/87.

Date of decision: 07.4.1993

Shri S.K. Ghosh..

...Petitioner.

Versus

Union of India & Anr.

...Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.

THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER(A).

For the Petitioner.

Shri G.D. Gupta,
Counsel.

For the Respondents.

Mrs Raj Km. Chopra,
Counsel.

JUDGEMENT(ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Shri S.K. Ghosh, was the Packaging Engineer at the relevant point of time. The next promotional post is that of the Deputy Director for which one has to put in five years service as Packaging Engineer to earn eligibility for promotion. While the petitioner, Shri Ghosh, was the Packaging Engineer, Shri Bhargava had already become the Deputy Director in the year 1983. On 28.8.1985, an order came to be passed copy of which is produced in this case as Annexure 'C'. Paras 5,6 and 7 which are relevant for our discussion may be extracted as follows:

✓ "(5) The post of Packaging Engineer (Rs.1100-1600) in the Secretariat of Registration Committee and Central Inspection Board, Faridabad, is hereby transferred to the Packaging and Processing Division, Central Insecticides

Laboratory, Faridabad. The existing incumbent of the post of Packaging Engineer, Dr. S.K. Ghosh, is transferred to Packaging and Processing Division of Central Insecticides Laboratory, Faridabad alongwith the post.

(6) The post of Deputy Director (Packaging and Processing, Rs.1500-1800) in the Packaging and Processing Division, Central Insecticides Laboratory, Faridabad is hereby transferred to Secretariat of Registration Committee and Central Insecticides Board, Faridabad. The present incumbent of the post of Deputy Director (Packaging and Processing), Packaging and Processing Division, Central Insecticides Laboratory, namely, Shri V.C. Bhargava, along with the post is hereby transferred to Secretariat of the Registration Committee and Central Insecticides Board, Faridabad.

(7) Since the posts mentioned at S.Nos.1 &2, 3&4 and 5&6 are being interchanged, their duties shall also stand interchanged. To clarify, Deputy Director (Plant Pathology) on transfer to Registration Committee Secretariat vice the post of Plant Pathologist (Insecticides) shall be assigned the jobs/responsibilities earlier assigned to Plant Pathologist (Insecticides) and vice versa. Similarly the duties and responsibilities of posts mentioned at S.No. 3 and 4 and 5 and 6 shall also be interchanged. However, the Plant Protection Adviser to the Govt. of India shall have the power to allocate/assign any job/additional work to any officer".

2. The petitioner was transferred from his division along with his post to the division where Shri Bhargava was functioning as a Deputy Director and Shri Bhargava in turn was transferred with the post of Deputy Director. Paragraph 7 of the order says that as the posts are being interchanged, their duties also stand interchanged. It is in this background that the petitioner sought a clarification vide his representation dated 3.7.1986 as to whether he would be discharging the duties as Deputy Director but drawing the salary attached to the post of Packaging Engineer. The petitioner's case is that he did not

get any reply to the said representation. It is his case that he was discharging the functions of the Deputy Director but receiving the pay and emoluments attached to the post of Packaging Engineer. It is on the ground that he was discharging the higher responsibilities that the petitioner has approached this Tribunal for a direction to the respondents to grant him the benefit of pay attached to the post of Deputy Director on the plea that he is discharging the functions attached to the said post.

3. The respondents have denied the claim of the petitioner and asserted that the petitioner is discharging the duties assigned to the post of Packaging Engineer and such of the other duties as were assigned to him by the authorities empowered to do so, as is clear from para 7 of the order dated 28.8.1985 extracted above. They have also taken the stand that he has been discharging the duties of the post of Packaging Engineer and, therefore, he is entitled to the salary of that post. In other words, the respondents have taken the stand that the petitioner is not discharging the duties of the post of the Deputy Director to claim the benefit attached to the higher post. The principle of equal pay for equal work is pressed into service by Shri Gupta, learned counsel for the petitioner. It is now well settled that for invoking the principle of equal pay for

equal work, the petitioner has the burden of establishing that the nature of duties, functions and responsibilities of the two posts are similar. The petitioner has not placed materials in regard to this aspect of the matter. Shri Gupta, however, submitted that the necessary material having come on record, the same having been placed by the contesting respondents, the petitioner can rely upon the same. It is on that basis that he invited our attention to the enumeration of duties, functions and responsibilities attached to the post of Deputy Director furnished in the reply of Shri Bhargava as Annexure 'VIII'. It enumerates duties attached to the post of Deputy Director (Packaging and Processing), Central Insecticides Laboratory, Directorate of PPQ&S, Faridabad. The first and the most important duty enumerated therein reads:

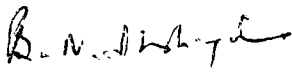
"To act as Head of the Division of Packaging, Storage and Equipment, to introduce new packaging devices and ensure the conformity of the packaging material as per Insecticides Act".


4. Along with the rejoinder filed by the petitioner, he has produced a copy of the order, Annexure P-I dated 1.10.1985 enumerating the duties assigned to the petitioner on his transfer. There are seven duties in all. They correspond to the duties (ii) to (viii), attached to the post of Deputy Director enumerated in Annexure VIII referred to earlier. There is no doubt that seven out of the eight duties are common to the

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post of Packaging Engineer as also to the post of Deputy Director. There is, however, one important responsibility which only Deputy Director is required to discharge and not the Packaging Engineer. That duty we have already extracted above which is an important duty to act as Head of packaging, storage and equipment division. He has also the duty to introduce new packaging devices and ensure conformity of the packaging material as per Insecticides Act. This additional duty which the Deputy Director is required to discharge is a very important duty. Among them is the duty to act as Head of the Division. This itself brings the element of superiority so far as the Deputy Director's post is concerned, to that of the Packaging Engineer. As the Packaging Engineer is in the feeder category to the cadre of Deputy Directors, it is obvious that it is an inferior post. The inferiority of the post of Packaging Engineer is not merely in name but in substance because the Deputy Directors have been assigned more onerous duties and responsibilities. There is no similarity in the duties, functions and responsibilities between those exercised by the petitioner and Shri Bhargava. The petitioner has failed to establish that he was discharging similar duties, functions and responsibilities to those performed by Shri Bhargava in his capacity as Deputy Director. Hence, he cannot invoke the principle of equal pay for equal work.

5. For the reasons stated above, this petition fails and is accordingly dismissed. No costs.


(B.N. DHOUNDIYAL)
MEMBER


(V.S. MALIMATH)
CHAIRMAN

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