

17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.No. 1679/90.

Date of decision: 26-5-95.

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. Shri R.L. Luthra,
S/o Late Shri Ratan Lal,
R/o D.D.A. Flat No. 200 (RPS)
Sheikh Sarai, Phase I, Malviya Nagar,
New Delhi-110 017

and 34 others as per Memo. of Parties. .. Applicants

(By Advocate Shri G.D. Gupta)

versus:

1. Union of India
through the Secretary to the
Secretary to the Govt. of India,
Ministry of Agriculture and
Cooperation, Department of Agriculture,
Krishi Bhavan,
New Delhi-110 001.

2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110 008.

.. Respondents

(By Advocate Shri VSR Krishna)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)]

This application has been filed by persons,
who are employed as Dairy Supervisors/Assistant Managers,
challenging the decision of the respondents in revising
the payscale of their posts to Rs. 1400-2300 from
Rs. 425-700 with effect from 1.1.1986. They are aggrieved
that their scales of pay for the posts of Dairy Supervi-
sors/Assistant Managers were not revised to Rs. 1640-2900
by the respondents, which they claim is arbitrary,

..

discriminatory and, therefore, violative of Articles 14 and 16 of the Constitution and illegal. They have filed this application claiming that a declaration should be given that they are entitled to the scale of pay in the post of Dairy Supervisor/Assistant Manager in the revised pay scale of Rs. 1640-2900 with retrospective effect from 1.1.1986 i.e. the date of the implementation of the report of the Fourth Pay Commission's recommendations. They had also claimed ^{the} relief in para 8(B)(iii) for payment of risk allowance with all consequential benefits, which claim they have not pressed at the hearing.

2. We have heard Shri G.D. Gupta, learned counsel for the applicant and Shri V.S.R. Krishna, learned counsel for the respondents at considerable length and have carefully perused the records, including the recommendations of the Fourth Pay Commission's Report 1986, on which both the parties relied upon.

3. Shri G.D. Gupta on behalf of the applicants has based his claim for the relief as mentioned above, on the grounds that in almost all other equivalent posts in other departments of the Government where the status, nature of duties and responsibilities, qualifications etc. ^{are the same} the payscales have been revised to Rs. 1640-2900 from the pre-revised scale Rs. 425-700, whereas in the case of the applicants they have been left out and their previous scale only revised to Rs. 1600-2900, which is patently

19
arbitrary. He states that prior to 1.1.1986, there was also a selection grade scale of Rs. 550-750 which has been abolished, but while revising the scale of Rs. 425-700 to Rs. 1400-2300, this was not kept in mind by the Fourth Central Pay Commission. According to Shri Gupta, the post of Dairy Supervisor/Assistant Manager in the Delhi Milk Scheme which are in the scale of Rs. 425-700 was not at all dealt with by the Fourth Central Pay Commission and the Ministry of Agriculture, Government of India had on its own picked up the scale of Rs. 1400-2600 for their scale instead of clubbing the two classes, namely, the scale of Rs. 425-700 and the selection grade scale and giving them higher scale of Rs. 1640-2900 as done in some other cases. They claim that their duties are hazardous as they work in very low temperature in continuous shifts using dangerous chemicals etc. Being part of a public utility service they have to work continuously, ^{even} ~~even~~ including public holidays. All these factors are relevant which should have weighed with the Central Fourth Pay Commission.

4. Taking into account the duties to be performed by the applicants, the qualifications required for the post held by the applicants were revised by amendment of the recruitment rules on 19.5.1976. Under the previous recruitment rules of 1964 (Annexure A-3), even the diploma holders were eligible for being appointed to the post of Dairy Supervisor/Assistant Manager whereas

1977

..

26

under the 1976 Rules, the essential qualifications were raised to the level of a Degree in dairying or agriculture. Shri Gupta submits that in spite of requiring higher qualification under the 1976 Rules, and higher duties to be performed by them, the applicants have been unfairly denied higher scale of pay as given to a Veterinary Officer, who has been placed in the scale of Rs. 2000-3500.

5. The applicants ^{also} rely on the fact that they have meagre chances of promotion to the higher post of Sectional Manager as mentioned by the Staff Inspection Unit (SIU) in their letter dated 22.11.1984 (Annexures A-3 and A-4). The SIU has stated, inter alia, that the nature of work/duties performed by both the Dairy Supervisor and Sectional Manager are more or less the same and they, therefore, felt that Sectional Managers/Dairy Assistants have hardly any-thing more to contribute. The applicants rely on the findings of the SIU that they have little chances of promotion as they have been stagnating in their grades for the periods 17 to 20 years and in some cases 28 to 30 years which is also a ground for giving them higher payscale. They stressed on the report submitted by SIU in which it is mentioned that Sectional Managers and Dairy Supervisors were doing the same job.

6. Shri Gupta mentioned that being aggrieved that the Central Fourth Pay Commission did not take into account the above facts which are in their

js

21

favour, the applicants made representation dated 30.1.1990 to the Government (Annexure A-7). In response to one of their representations sent on 6.11.1986, they claim that the Chairman, Delhi Milk Scheme had recommended their case, keeping in view their higher educational background, professional experience, nature of duties the fact that various other categories of posts performing the same nature of duties have been given the scale of Rs. 1640-2990 such as Income Tax Inspectors in the Central Excise and Customs, Sub Inspector, Police, Sub-Inspectors, CBI and Technical Assistants, Ministry of Human Resources and their lack of promotional opportunities. In other words, the main thrust of the argument of the learned counsel for the applicants is that since the applicants' case has not been considered by the Fourth Central Pay Commission, based on the recommendations of the Chairman, Delhi Milk Scheme, who was very much aware of their peculiar circumstances, the Government ought to have considered his recommendations for upgrading their pay scales with effect from 1.1.1986. The applicants having waited from 19.12.1986 that the Government would accept the recommendations of the Chairman, Delhi Milk Scheme and since nothing has been done, they have filed this O.A. on 6.9.1990.

18

7. Shri Gupta relies on the observations of the Supreme Court that they are entitled to rely on the

..

22

doctrine of 'equal pay for equal work' - Bhagwan Das v. State of Haryana (AIR 1987 SC 2049) , Jaipal & Ors. v. State of Haryana (1988(3) SCC 354 at 363) and Judgment in Mrs. Debika Pakrashi v. UOI & Ors. (O.A.No. 1009/94 with O.A. No. 1211/94 dated 21st November, 1994). They discharge duties and functions similar to those who have been given the higher scales in other departments, which is, therefore, discriminatory and arbitrary.

181

8. The respondents have filed their reply in which they have taken the preliminary objection that the scales of pay for various categories of Central Government servants, including those in Delhi Milk Scheme have been adopted on the recommendations of the Central Fourth Pay Commission. Shri VSR Krishna, learned counsel, has also submitted that this is not a case where the Tribunal should interfere or investigate whether the nature of duties, qualifications and responsibilities are the same or not when the Central Fourth Pay Commission has already dealt with the same in their report. Regarding the change of the qualifications ~~in the recruitment rules~~ ¹⁸² and enacted in the recruitment rules of 1976, he states that if the applicants' case is for enhancement in their payscales resulting from the higher educational qualifications required under these Rules, then their case should have been agitated as far back as 1977 ~~or~~ ^{concerned with} thereabout and not at this stage. The SIU's report was ^{concerned with} ~~examining~~ the various

..

requirements at the supervisory level in order to streamline the office work and has nothing to do with the recommendations of the payscales for various posts. As regards the ground taken by the applicant that they have meagre promotional avenues, he submitted that this again is not relevant as such for demanding a higher payscales, as it is directly concerned with the question of providing more or adequate avenues for promotion, as the case may be. He submits that the recommendations of the Chairman, Delhi Milk Scheme in the first part actually refers to the representation of the Technical Staff Association and his own recommendations are only at the end of the letter wherein he has made a comparison of the post of Dairy Inspector to that of an Inspector in T Income Tax Department in Central Excise & Customs, Police and CBI etc, which according to the learned counsel is not at all appropriate or meaningful. He also submits that all the applicants were given in situ promotion with effect from 1.4.1991 in the scale of Rs 1600-2600. To this, Shri Gupta had submitted that the in situ promotions were not granted in pursuance of the decisions of the

Y. /

Chairman, Delhi Milk Scheme (Annexure A-8) but in pursuance of the general orders of the Ministry of Finance which were applicable to all employees of the Government. He, therefore, submits that their claim for higher scale of Rs 1640-2900 should be given effect to from 1.1.1986 on the lines on which their counter-parts in certain other posts like CPWD, DDA and Tele-communications were given.

9. Shri Krishna submits that the Central Fourth Pay Commission in Chapter 8 of its report, 1986 (Part I Volume II) dealt with in detail the proposed pay structure of Civilian Employees. In para 8.19 posts, they identified 53 scales of pay and at S.No. 26 is given the payscale of Rs 425-700. Their recommendations are at paragraphs 8.38 and 8.39.

These recommendations were accepted by the Govt. of India.

Para 10.1 of Chapter 10 of the Report, under the heading 'Ministries and Departments provides that the scales of pay recommended in Chapter 8 will apply to all posts other than those for which specific recommendations have been made by them. In Chapter 10, they have discussed some categories of posts in different Ministries/ Departments and Organizations and have made specific recommendations regarding their proposed scales of pay. Paras 10.10, 10.11 and 10.12 specifically deal with various posts in the Delhi Milk Scheme and are reproduced below:-

"
10.10

In the Delhi Milk Scheme (DMS) there are 167 posts of cash clerks in the pay scale of Rs 290-400, whose main function is to collect cash from lik booths. It has been stated that the cash clerks have to start work from early

185

morning and have to work on holidays also, their duties are also stated to involve risks in carrying cash and they have no promotional avenues. It has been urged that their pay scale should be raised to that of U.D.C. We are unable to accept the suggestion but recommend the scale of Rs 1200-1800 for these posts.

10.11. Cold storage workers in the DMS, who are required to work in rooms kept at low temperature, are paid a cold storage allowance of Rs 20/- per month this allowance was introduced in 1966 at Rs 10/-per month which was raised to Rs 20/- in 1975. Ministry of Agriculture has proposed that the rate may be increased to Rs 30/- per month. The ministry has further suggested that boiler house workers who are paid a special allowance at Rs 10/- per month may be paid Rs 30/- per month. We accept these suggestions and recommend that the rates of cold storage and boiler house allowances may be raised to Rs 30/- per month.

10.12. Heavy vehicle drivers in DMS are paid special pay of Rs 25/- per month for performing additional duties of distribution of milk and milk products. The amount of special pay was fixed in 1966 which has been proposed by the Ministry of Agriculture to be raised to Rs 50/- per month. We accept the suggestion and recommend accordingly. "

Y.S.

From the above recommendations of the Fourth Pay Commission, it is clear that the Commission had in mind the various posts in the Delhi Milk Scheme, including Cold Storage Workers, who are required to work in low temperature and so on, for which the Commission had made appropriate recommendations. The Commission did not, however, make any special recommendations for personnel occupying the posts of Dairy Supervisors/Assistant Managers, who are before us, but that does not mean that they have not at all been dealt with.

10. Shri VSR Krishna relies on the observations of the Supreme Court in State of U.P. v. J.P. Chaurasia (AIR 1989 SC 90), Shyam Babu Sharma & Ors. v. UOI & Ors. (1994 (2) ATC 121 and Mewa Ram Kanojia v. All India Institute of Medical Sciences & Ors. (1989 (1) ATJ 653).

11. We have carefully considered the arguments of both the learned counsel and the case law relied upon by them. The arguments of Shri Gupta that because of the higher qualifications required under the amended Recruitment Rules of 1976 where ~~the~~ ^{an} degree was required or the fact that the applicants have meagre promotional avenues as stated in the SIU Report will not in our opinion help the applicants for getting a higher scale of pay ^{wef 1.1.86} as demanded by them in this application. In amending the Rules, the relevant factors for consideration would be the job requirements and nature of duties and responsibilities. No doubt, it is a well-

settled principle of service law that adequate promotional avenues have to be provided in any service, but this factor will be relevant for providing suitable avenues of promotion, but it will not justify giving a higher payscale to the applicants as demanded by them.

12. The next ground taken by the applicants is based on the principle of 'equal pay for equal work' on the ground that certain other officers in other departments like Income Tax Inspectors, Sub-Inspectors in CBI etc. ~~who~~^{who} have been given a higher payscale by the Fourth Pay Commission. In this context the relevant observations of the Supreme Court in Mewa Ram Kanojia's case (Supra) are as follows :-

" ... The doctrine of 'Equal pay for equal work' is not ^{an} abstract one, it is open to the State to prescribe different scales of pay for different posts having regard to educational qualifications, duties and responsibilities of the post. 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 the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay" ..

The Court did not accept the petitioners' contention that they should be given higher payscales on the ground of discrimination because Speech Therapists in Rohtak Medical College, National Institute for Hearing Handicapped, Hyderabad, Safdarjang Hospital, etc. had been given higher scales of pay. They observed that

..

28

merely because Speech Therapists performing similar duties and functions in other institutions are paid higher scales is no good ground to accept the petitioners' claim for equal pay. In the present case, the applicants' claim is for higher payscale which has been recommended to certain other officers in other Government department, who also previously had the same scales of pay as the applicants. The Fourth Pay Commission has recommended higher replacement scales of pay for the other officers, who earlier had the same payscales as the applicants after thorough study and consideration of their duties etc. and this recommendation has been accepted by the Government. It has been correctly submitted by Shri VSR Krishna that the Supreme Court has in a number of cases held that classification made by a body of experts like Pay Commission after full study should not be disturbed except for strong reasons which indicate that the classifications made are unreasonable or arbitrary (See Shyam Babu Verma and Others v. UOI & Others (1994 ATC 121)). The doctrine of equal pay for equal work cannot also be applied in a mechanical or casual manner. In State of West Bengal v. Hari Narayan Bhowal (1994 (27) ATC 524, the Supreme Court has held as follows:-

821

* Unless a very clear case is made out and the court is satisfied that the scale provided to a group of persons on the basis of the material produced before it amounts to discrimination without there being any justification, the court should not take upon itself the responsibility of fixation of scales of pay, especially when the different scales of pay have been fixed by Pay Commission or pay revision committees

having persons as members who can be held to be experts in the field and after examining all the relevant material. It need not be emphasised that in the process undertaken by the board an anomaly in different services may be introduced, of which the court may not be conscious, in the absence of all the relevant materials being before it. Till the claimants satisfy on material produced that they have not been treated as equals within the parameter of Article 14 court should be reluctant to issue any writ or direction to treat them equal, particularly when a body of experts has found them not to be equal" (emphasis added)

13. In the present case, the duties and functions of the applicants, who are working as Dairy Supervisors/Assistant Managers in the Delhi Milk Scheme cannot be presumed to be similar to the duties performed by an Income Tax Inspector, CBI Inspector or others with whom they claim parity, in the absence of any materials being placed on record. We feel that the applicants have not even tried to show that their nature of duties and responsibilities are similar to that of an Inspector in CBI because there can be none, and we are not satisfied that there is, therefore, any discrimination or arbitrariness on this account. This argument based merely on the ground of similar pay scales fails and is rejected.

..

30

14. From a perusal of chapters 8 and 10 of the Fourth Pay Commission's report, we agree with the submissions made by the learned counsel for the respondents that it cannot be said that the Fourth Pay Commission did not consider the posts held by the applicants in the Delhi Milk Scheme in their report. Shri Krishna has also submitted the memorandum submitted by the Government of India, Delhi Milk Scheme to the Fourth Pay Commission for their consideration in which the posts of Dairy Supervisor/Assistant Managers have also been referred to. Chapter 8 of the Report deals with the existing pay structure for Civilian Employees in Central Government. More specifically, paragraphs 8.19 and 8.37 - 8.39 deals with the existing payscales to which the applicants belong. In Chapter 10, certain categories of posts have been taken up for specific recommendations in which paragraphs 10.10 - 10.12 deal with certain other posts in Delhi Milk Scheme. In the light of these recommendations, we reject the contention of the applicants that their case has not at all been considered by the Fourth Pay Commission and hence the recommendations of the Chairman, Delhi Milk Scheme ought to have been accepted by the Government with effect from 1.1.1986.

15. The cases relied upon by the applicants, namely, Jaipal & Ors. v. State of Haryana (Supra) and Bhaqwan Das v. State of Haryana (Supra) are distinguishable from the facts of this case. In Bhaqwan Das case, the court held that the mode of appointment whether under a temporary scheme

18

..

or on a regular basis is irrelevant once it is shown that the nature of the duties and functions discharged and the work done is similar in nature. Similarly, in the case of Jaipal & Ors. v. State of Haryana, it was held that the difference in the mode of selection will not effect the application of the doctrine of equal pay for equal work of both the classes of persons perform similar functions and duties under the same employer. The other case relied upon by the applicants (Mrs. Debika Pakrashi v. UOI & Ors.) is based on the particular facts of the case wherein the respondents had apparently conceded that the posts held by the applicants and the duties and responsibilities attached thereto, are identical for all purposes with the corresponding posts in the National Archives of India where the higher payscales are given. This case would also not apply to the facts of the present case.

16. In the result, having regard to the facts of the case and the judgments of the Supreme Court referred to above, we are of the view that when an expert body like the Fourth Pay Commission had gone in depth into the duties including those in Delhi Milk Scheme, performed by various Government employees, and recommended different scales of pay for them, there is no justification for the Tribunal to interfere with the same at this stage.


17. However, before we part with this case, we would like to make some observations taking into account the recommendations of the Chairman, Delhi Milk Scheme of the special circumstances applicable to the applicants justifying


32

giving them a higher payscale. Since the Fifth Pay Commission has been constituted by the Government of India which is examining the pay structure of Government employees now, it will be appropriate to give direction to the respondents to have the applicants' claims placed before that Expert Body, if not already done, so that they can examine the matter from all angles further.

18. The O.A. is accordingly disposed of in terms of what is contained in paragraphs 16 and 17 above.

No costs.


(Smt. Lakshmi Swaminathan)
Member (J)


(S.R. Adige)
Member (A)