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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A.No.275/90

DATE OF DECISION 30.4.91

SHRI S.N.BHATNAGAR & Ors. -- APPLICANTS

VS

UNION OF INDIA -- RESPONDENT

C O R A M

SHRI B.N. JAYASIMHA, HON'BLE VICE-CHAIRMAN

SHRI J.P.SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANTS -- SHRI A.K.SINHA

FOR THE RESPONDENT -- SHRI M.L.VERMA

1. Whether Reporters of local papers may be allowed to see the Judgement? Ys

2. To be referred to the Reporter or not? Ys

J U D G E M E N T

(DELIVERED BY SHRI J.P.SHARMA, HON'BLE MEMBER (J))

The applicants Assistant Directors (Non Police), hereinafter referred to A.D.(N.P.) Intelligence Bureau (in short I.B.) filed the application under Sec.19 of the Administrative Tribunals Act, 1985 for redressal of their grievance "denial of special pay, as admissible to other Assistant Directors in the I.B. discharging the same duties and functions like the applicants thereby causing discrimination to the applicants violating of Art. 14 & 16 read with Art.39(d) of the Constitution of India and the principle of 'equal pay for equal work'".

2. The applicants claimed the reliefs:-

- a) Removal of discrimination relating to Special Pay among the three categories of Assistant Directors.
- b) Direct the respondents to give Special Pay uniformly among the 3 categories.
- c) Grant Special pay from the date of functioning as Assistant Director, viz. 1.8.85 and 12-5-1983 respectively.
- d) This application may be disposed of on or before 30-6-1990 as the applicants No.1 is due to retire on that day.
- e) Pass any such order, orders, as this Hon'ble Tribunal deems fit and proper in the circumstances of the case.

3. The applicants Assistant Directors Non Police in the grade 3000-4500 belong to the Intelligence Bureau Secretariat Service and were promoted from the grade of Section Officers 2000-3500 (Central Civil Service Gr.E Gazetted Ministerial) after putting in minimum of 8 years service in that grade of Section Officers. The next promotional post is Additional Deputy Director Non Police (3700-5000). The task assigned to the applicants is alleged to be highly responsible and sensitive. It is said in the application that earlier there assignments were handled by Assistant Directors (Executive) in short A.D.(E).

4. In the Intelligence Bureau, the posts of
(Executive)
Assistant Director/are filled as per Assistant Director
(Executive) Recruitment Rules, 1972. These Rules
were further amended in 1986 when in Sub-Rule, an
addition was made : Additional Director (Executive)/Central
Intelligence Officer. $33\frac{1}{3}$ of the posts are filled up
by promotion among the Joint Assistant Directors (Executive)
and $61\frac{2}{3}\%$ are filled by transfer on deputation by I.P.S.
(Senior Scale), Officers of C.P. Forces/Organisations,
State Police Services, Officers of All India Services/Central
Services Grade 'A', the balance of 5% by re-employment of
retired officers of Military Intelligence Wing.

5. The third category of the Assistant Directors,
Intelligence Bureau are Assistant Director (Technical)
which are technical posts and each of the above three
categories, i.e., A.D.(E), A.D.(Tech.) and A.D.(Non-Police)
to which applicants belong have totally different
Recruitment Rules.

6. The applicants A.D.(M.P.) have sought comparison
with A.D. (E). The A.D.(E) who came on deputation as said

in para (4) above are in the scale of Rs.3000-4500/- and got special pay of Rs.500/- w.e.f. 1.1.1986 which was earlier Rs.300/- . However, the A.D.(E) who are departmentally promoted from the cadre of Joint Assistant Director (E) (in short J.A.D.) with 2 years' experience of regular service as J.A.D. got the pay scale of Rs.3000-4500/- plus special pay of Rs.200/- w.e.f. 1.1.1986 which was earlier Rs.100/- .

7. The points of similarity in the duties and functions of the posts held by the applicants as A.D.(N.P.) and these A.D.(E) getting special pay of Rs.500/- or Rs.200/-, as the case may be, can be reproduced from the chart given by the applicants during the course of the arguments.

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Comparative statement

Main Stream	Mode of induction	Pay Scale	Function/ responsibility/duties	Any Special Qualification required for any category	Special pay admissible	Remarks/additional information
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Assistant Director(Ex) (Ref.recruitment Rules at P.17 of the petition)	i) IPS officer drawn from states	3000-4500	Identical as clarified by "Director Intelligence Bureau who is the Chief and competent authority to define the functions, considering of the special nature of work of IB. Basically they all supervise collection, analysis dissemination and all other allied work concerning the intelligence etc.	No	Rs.500/- wef. 1-1-86 earlier it was Rs.300/-	<p>i) Sp. pay is attached to the post (Rs.500/- as AD and Rs.400/- as Deputy Director) and given to this category for working in IB as the work happen to be of specially arduous nature of duties(See p.16) of the petition and also 19).</p> <p>ii) There is no specific term of deputation and they continue in IB for decades without any specific sanction.</p> <p>iii) Normal deputation term is 3 years extendable by one year whereafter deputation allowance should stop. But in case of IPS officers they continue to get it so long as they continue in IB which indicates that it is not deputation allowance.</p> <p>iv) Latest pay slips show that they get special pay and not Central(Deputation on tenure) allowance.</p>
AD(Ex) (R.R. at P.17)	ii) By promotion of Jt. Assistant Director(Ex) with 2 years regular service as JAD			No	Rs.200/- wef. 1-1-86 earlier it was Rs.100/-	<p>Departmental officers who are partly initially recruited in the rank of Jr.Intelligence Officer and Assistant Central Intelligence Officers(Grade-II)(equivalent to ASI and Sub Inspector) and partly rise from Constable Subsequently after completing specified years of service are promoted to the rank of Assistant Central Intelligence Officer Grade-I(equivalent to Inspector), Dy. Central Intelligence Officer(equivalent to Dy. S.P.), Jt. Assistant Director and finally to the rank of Assistant Director. Posts from</p>

8. The respondents in their reply contested the claim of the applicants and stated:

"That the application is misconceived and is not maintainable under law. A common designation of posts and cadres in this context would be extremely delusive. It is apt to quote the legal maxim that 'Nothing similar is identical' nihil simile est idem. The principle of "equal pay for equal work". This principle has no mechanical application in every case of similar work. It has to be read into Article 14 of the Constitution which permits reasonable classification founded on different bases. It is now well established that the classification can be based on some qualities or characteristics of persons grouped together and not in other who are left out. In service matters, merit or experience could be the proper basis for the classification to promote efficiency in administration."

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2. On the facts, the respondents stated that as regards grant of special pay of Rs.500/-, that is the central deputation tenure allowance and such incumbents after the period of deputation revert to their original scale of pay in the parent department. This allowance has also been specified in Schedule III(e) of the I.P.S. Pay Rules by a recent amendment of 1939 (Annexure-I Coll.). It has been further stated that :

"Normally the posts of AD(Executive) and AD (Non-Police) should be identifiable and the incumbents posted against them should be from the respective sources as per the recruitment rules. Quite often, the posts of Assistant Director (Executive) tenable by departmental officers and IPS officers have been held in abeyance and in lieu thereof the posts of AD (Non-Police) have been created, to provide promotional avenues for Section Officers of IB Secretariat Service. In view of such adjustments between the number of posts of AD (Executive) and AD (Non-Police) and even otherwise also, in view of the very nature of IB's functions and the experience acquired by the

Section Officers and AD (Non-Police), some of the ADs (Non-Police) happen to be given assignments which were earlier done by IPS Officers or by departmental AD (Executive). This cannot be the justification for the grant of Special Pay to the Assistant Directors (Non-Police)!

10. Further it is stated in the counter that :-
- "Nature of the main work/functions of the IB being sensitive, it is, in actual practice, difficult to clearly demarcate the duties and responsibilities of each post of AD (Executive) and AD (Non-Police) and keep the number of functional posts on the Executive or Non-Police side at the same level for all time to come. As a result and in view of the fact that Section Officers and Assistant Directors (Non-Police) acquire, over a period, experience relevant to the executive side, the AD (Non-Police) are given the assignments expected of Assistant Director (Executive). If over a period, because of the exigencies of service, some of the ADs (Non-Police) happen to be posted against posts which were held earlier by IPS OFFICERS or

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(1)	(2)	(3)	(4)	(5)	(6)	(7)
Asstt. Director (Non-Police) (Ref. to Recruitment Rules at P.24 of the petition)	iii) By promotion of Section Officers with 8 years of service	3000-4500		No	Nil	<p>JIO/ACIO-II to ACIO-I are Class-III non-gazetted whereas DCIO is gazetted Class-II. JAD/AD are Class-I. The recruitment/promotion is done in the Department. Only promotion to the rank of Asstt. Director needs UPSC concurrence.</p> <p>Partly(56%) Direct induction is in the rank of Assistant(Class-II-non-gazetted) through All India Competitive Examination conducted by UPSC and partly from the grade of UDC(Class-III non-gazetted they partly(50%) get promotion to the rank of Section Officer competing in UPSC Limited Departmental Examination or DPC(50%) Section Officers are Class-II Gazetted Officer and are groomed by IB to carry on all the functions of Assistant Director. Section Officers are promoted to the rank of Assistant Director by UPSC DPC on selection-cum- merit basis</p>

departmental officers appointed as AD (Executive), it cannot be conclusively concluded that the functions of all the Assistant Directors are similar. Further decadring of the posts of AD (Executive) and encadring them in the AD (Non-Police) and vice-versa is being resorted to time and again depending upon the exigencies of service and also in the interests of the departmental officers themselves to improve their promotional avenues. On the basis of interchangeability which is quite often in the interests of the members of the IB Sectt. Service themselves, the Assistant Directors (Non-Police) cannot lay a claim to any right in any respect (including grant of Special Pay)."

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11. We have heard the learned counsel of the parties at length and have gone through the record of the case. The simple question involved in this case is whether there can exist two grades with different pay scales in the cadre of Assistant Director (Non Police) and Assistant Director (Executive) who are doing as alleged the same or similar work and whether that shall be violative of the right to have 'equal pay for equal work.' In the present case there are different Recruitment Rules for posting as Assistant Director (Non Police) and Assistant Director (Executive). For the applicants ^{it} is a promotional post from the I.B. Secretariat Service. For Additional Director (Executive) to the extent of $33\frac{1}{3}\%$ this is departmental promotion post and ^{Joint} Additional Director with two years experience are eligible for promotion. For Additional Director (Executive) $61\frac{2}{3}\%$ is meant for I.P.S. and other Police Officers or Central Service Officer coming on deputation. As regards Assistant Director (Executive) posts which are meant by Officers coming on deputation from the senior scale of Central Administration Service or Central Police Force or

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organisation of State Police Service there cannot be any comparison at all with the applicants who are Assistant Director (Non-Police). This question regarding entitlement to the pay scale of deputation admissible to such above named Assistant Director (Executive) need not detain us longer. The answer to the question is simple that the officers coming on deputation in the foreign service from the parent department and this has already been renamed as Central deputation allowance.

12. It is only the fact of giving special pay of Rs.200/- per month to Assistant Director (Executive) who are promoted departmentally to the extent of $33\frac{1}{3}\%$ post which can be considered as why the same be not allowed to the applicants. The reason given by the respondents is that their A.D.(E) Recruitment Rules are different and further they are already getting from 1.1.1936 an allowance of Rs.100/- which has been doubled to Rs.200/- by the Fourth Pay Commission's report. The contention of the applicants is that they are discharging the same duties and functions like the Assistant Director (Executive) and so they also be given the special pay. It is also argued by the learned counsel that the respondents in their counter have admitted that the work which is

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being done by Assistant Director (Executive) has already been assigned to Assistant Director (Non Police). It is also admitted in the counter that the nature of the main work/function/I.B. being sensitive, it is, in actual practise normally difficult to demarcate the duties and responsibilities of each post of Assistant Director (Executive) and Assistant Director (Non Police).

13. In fact it has been argued by the learned counsel for the respondents that in order to create promotional avenues the Section Officers in the I.B. have been allowed promotion to the next higher post of Additional Director (Non Police). Merely because they are Assistant Director (Non Police) cannot earn special pay. In fact the matter has been fully gone into ^{by} the Fourth Pay Commission and no special pay has been recommended for the applicants. The law on the point is clear. In the State of U.P. versus J.P. Chaurasia reported in 1989 AIR SC P.19 the Hon'ble Supreme Court allowed the appeal of the State of U.P. and struck down the judgement of the

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Allahabad High Court granting equal pay for the Bench Secretaries Grade-I who were in the higher scale and Grade-II who were in the lower scale. Though both of them were discharging almost the same duties. The question was whether there should be two scales of pay in the same cadre of persons performing the same or similar work or duties? All Bench Secretaries in the High Court of Allahabad undisputedly having same duties but functions have been bifurcated into two grades with different pay scales. The Bench Secretaries Grade-I are in a higher pay scale than Bench Secretaries Grade-II. The Hon'ble Supreme Court held that the differentiation ~~xxx~~ made in the same cadre will not amount to discrimination. The classification based on experience is a reasonable classification. It has a rational nexus with the object thereof. The Hon'ble Supreme Court has considered the case of Federation of All India Customs and Central Excise Stenographers versus Union of India reported in AIR SC page 1291 and ^{quoted} _{from} a passage _{from} page 1297 of the report

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which is reproduced below :-

"There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criteria which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasise that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right."

And said (at p.1300 of AIR) :-

"The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less-it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact."

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14. The Hon'ble Supreme Court in the case of J.P. Chaurasia also considered the Randhir Singh versus Union of India A.I.R.1982 SC P.879. In this case the principle of equal pay for equal work has been accepted even than their Lordship observed at page 381 of AIR as follows:-

"It is well known that there can be and there are different grades in a service, with varying qualification 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."

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15. The Hon'ble Supreme Court also considered in the case of P.Savita versus Union of India AIR 1985 SC 1124 laid down the principle of 'equal pay for equal work' because in this case there was artificial division of senior Draftsmen in the Ministry of Defence Production with unequal scales of pay for the same work.

16. In Dhæerandar Chamoli versus State of U.P. 1986 (1 SCC)P.637 the Hon'ble Supreme Court found fault that the Central ^{Govt.} ~~has~~ not given the casual workers in Nehru Yuvak Kendra the same salary and advantage of service as to class-IV employees regularly appointed against sanctioned post. Similarly ⁱⁿ ~~in~~ Surendar Singh versus Engineer in Chief AIR 1986 SC P.584 the case of Daily Wages Workers Employed ^{for} ~~for~~ several years was considered ^{who} ~~who~~ demanded parity in their wages with regular employees and the relief was granted.

17. However, in the present case there is a basis of qualification based on some qualities or characteristic

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of persons grouped together. Those qualities or characteristics have reasonable relation to the object sought to be achieved. The merit, experience, qualifications and specific knowledge may be a ground for giving such concession to a principal group or class on the nature and quality of work performed by person of merit, experience and particular qualifications. The academic qualification may also matter. Merely because the two posts carry the same nomenclature will by itself be no ground to grant a special pay. In the case of the applicants, they come from Ministerial I.B. Secretariat Service as is evident from the Recruitment Rules. The Additional Directors (Non-Police), therefore, cannot have any comparison with Additional Director (Executive) who are getting special pay in the case of departmental promoters of Rs.200/- per month and those on deputation from other Central or State Services of Rs.500/- per month. In view of this we find that there is no discrimination nor the violation of principles of equal pay for equal work.

18. In view of the above, we do not see any force in this application and is being dismissed leaving the parties to bear their own costs.

Jomane
(J.P. SHARMA) 30.4.51
MEMBER (J)

B.N. Jayasinha
(B.N. JAYASINHA)
VICE CHAIRMAN

Proposed by me in the open court.

Jomane
30.4.51