

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A./ ~~I.A.~~ No. 750/91

Decided on 11-10-96

Sh. H. S. Shiromani.....

..... APPLICANT(S)

Shri H. S. Phoolka.....

Advocate

Versus

Director, I. B. and Secretary..... Respondents  
Ministry of Home Affairs

.. Shri V. K. Mehta... Advocate

CORAM

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

Hon'ble Shri/Smt. K. Muthukumar, Member(A)

1. To be referred to the Reporter or not? *yes*
2. Whether to be circulated to other Benches of the Tribunal? *X*

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member (J)

(20)

Central Administrative Tribunal  
Principal Bench.

O.A. 750/91

New Delhi this the 11th day of October, 1996

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

**Hon'ble Mr. K. Muthukumar, Member(A).**

H.S. Shiromani, JIO-I/G,  
S/o late Shri N.D. Shiromani,  
R/o WZ-24A, Palam Village,  
New Delhi-45.

... Applicant.

By Advocate Shri H.S. Phoolka.

Versus

1. Director Intelligence Bureau,  
Ministry of Home Affairs,  
North Block,  
New Delhi.

2. Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi.

... Respondents.

By Advocate Shri V.K. Mehta.

O R D E R

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

This application has been filed by the applicant praying that the respondents should be directed to give him the same wages and pay scale as given to ACIO-II/G along with other benefits on the principle of equal pay for equal work. Although admittedly the applicant is working as a Junior Intelligence Officer, Grade-I (JIO-I/G) and the pay scale given to him is Rs.1320-2040, according to him, he is performing similar duties as Assistant Central Intelligence Officer, Grade-II (ACIO-II/G) which is in the pay scale of Rs.1640-2900. He further submits that the

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duties and responsibilities of both JIO-1/G and ACIO-I/G are same and that there has been constant interchange of postings in these two posts. He submits that the JIO-1/G is virtually performing work which is identical to that performed by the ACIO-II/G. He has also given a chart (Annexure-I) showing the duties when JIO-I/G and ACIO-II/G have handed over their charge to each other between 1986 and 1988. The learned counsel for the applicant has also submitted that the recruitment method of the JIO-I/G and ACIO-II/G is also the same. In the circumstances, he has submitted that the payment of lower wages to JIO-I/G as compared to those ACIO-II/G is illegal, unlawful and is violative of the principles of equal pay for equal work. The learned counsel for the applicant Shri Phoolka has relied on the following judgements:

- (1) State of M.P. Vs. Pramod Bhartiya, AIR 1993 SC 286.
- (2) Randhir Singh Vs. Union of India, AIR 1982 SC 879.
- (3) Jaipal Vs. Union of India, AIR 1988 SC 1054.
- (4) Pramod Kumar Vs. Union of India, SLJ (Chand.) 1982 (2) 510.
- (5) Alok Kumar Vs. Union of India, SLJ 1994(1)514.
- (6) SLJ 1994(1) P-489.
- (7) AIR 1985 SC 1124.
- (8) AIR 1982 SC 879.

2. The respondents have filed a reply in which they have controverted the above <sup>facts</sup> ~~facts~~. According to them, there might have been instances where JIO-1/G might have been posted to work as ACIO-II/G and vice versa to meet operational requirement in emergent

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circumstances as also due to shortage of staff at far-flung check posts. Further, according to them, there is a marked difference of standard of selection for both the posts for which there are separate recruitment rules although they have admitted that the training given to both these officers is identical. They have explained further that although basically intelligence work is similar and has the same modes, techniques and nuances, in actual practice in the execution of work, there is always a qualitative difference as regards the reliability and responsibility. The learned counsel for the respondents, Shri Vijay Mehta, has also submitted that merely because the applicant has been required to handle some work of similar nature of a higher level, it does not entitle him to the higher pay as the post of ACIO-II/G is a promotion post under the rules. He has also relied on the judgements of the Supreme Court in State of U.P. Vs. J.P. Chaurasia, (AIR 1989 SC 19) and Randhir Singh Vs. Union of India, (AIR 1982 SC 879). In the circumstances, he has submitted that the applicant's claim for higher pay in the higher grade may be dismissed.

3. We have carefully considered the arguments advanced by the learned counsel for the parties and the case law cited by them. It is seen from the Intelligence Bureau (Non-gazetted executive posts) Recruitment Rules, 1982 that JIO-1/G with five years service in the grade is eligible to be considered for promotion to the post of ACIO-II/G. It is also

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noted that both these posts are governed by different sets of recruitment rules. The respondents have not denied the fact that to meet operational requirement in emergent circumstances, officers working in these two posts have been interchanged but have correctly denied that merely based on this, the applicant cannot claim the pay of the higher grade which is in the promotional channel. In a recent judgement of the Supreme Court in Purna Chandra Nanda Vs. State of Orissa & Anr. (SLJ 1996(2) 55), the Supreme Court has held that when scale of pay is different with respect to two different posts, then even if an employee/incumbent holds another post due to exigency, he is per se not entitled to the other pay scale as that will amount to "jumping the queue and land in a higher ladder". The judgement of the Supreme Court reads as follows:

"Shri Misra, learned counsel for the appellant, contended that the High Court in Writ Petition O.J.C. No. 1189/73 and other matters had held that the Farm Manager post is an intermediary post for promotion to the Gazetted cadre. All persons who hold that post are entitled to equal pay. That order came to be final by dismissal of the SLP by this Court. Consequently, the appellant having held the post of a Farm Manager is entitled to equal pay. In the counter-affidavit filed in the Tribunal as well as in this Court, the Government has pointed that the holders of the post are having different scale of pay. Mere exigency of holding the post as a Farm Manager do not per se entitle the incumbent to the same scale of pay which was not admissible to the person who held the post as a Dairy

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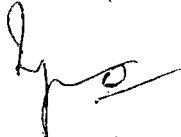
Supervisor. It is pointed out that the scale of pay varies according to the Gazetted or non-Gazetted cadre. In paragraph 7 of the counter-affidavit filed in this Court, they have reiterated the distinction between the various posts held by the persons in the Farm Branch and Dairy Branch. Merely because the posts are inter-changeable as Farm Manager, they do not automatically become entitled to be the holder of the post and for the same scale of pay. The meet (meat-sic) of the matter is that scales of pay are different and direction to grant equal pay is to allow the appellant to jump the queue and land in a higher ladder. The Tribunal, therefore, was right in refusing to grant the same scale of pay to the appellant on the day on which he was not entitled as per his seniority. Though Shri Mishra contended that the appellant was promoted to the post of a Farm Manager, we do not find any acceptable material on record to conclude that he was holding Class II Gazetted post in his own right. Under these circumstances, the principle of equal pay for equal work cannot be used as a shield to reach higher cadre of service in accordance with rules of promotion and seniority. The Tribunal is well justified in distinguishing the judgement of the High Court not giving the same benefit".

(Emphasis added)

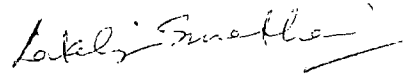
4. The aforesaid judgement of the Supreme Court would fully apply to the facts in this case, as the post of ACIO-II/G is a higher promotion post on which the applicant might have worked at times. <sup>and he will, therefore, not be entitled to get the higher pay</sup> In this view of the matter, we do not think it is necessary to deal with in detail the other judgements relied upon by the applicant as they are distinguishable.

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5. In the facts and circumstances of the case, we find no merit in this application. It is accordingly dismissed.



(K. Muthukumar)  
Member(A)



(Smt. Lakshmi Swaminathan)  
Member(J)

'SRD'