

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1371/2004

New Delhi, this the 26th May, 2006

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr.N.D.Dayal, Member (A)

Ms. A. Saraswati
Regional Home Economist
Directorate of Extension
Ministry of Agriculture
Krishi Vistar Bhawan
New Delhi.
(By Advocate: Shri B.S.Mainee)

...Applicant

Versus

Union of India : Through

1. The Secretary
Ministry of Agriculture
Department of Agriculture and Cooperation
Krishi Bhawan
New Delhi.
2. The Director of Administration
Directorate of Extension
Ministry of Agriculture
Krishi Vistar Bhawan
New Delhi.
3. The Director
National Building Organisation
Ministry of Urban Development &
Poverty Alleviation
Nirman Bhawan
New Delhi.

...Respondents

(By Advocate: Shri S. N. Sharma)

ORDER

By Mr. N.D. Dayal, Member (A):

The applicant, in this OA, who is working as Regional Home Economist (RHE) with the Directorate of Extension, Department of Agriculture and Cooperation, has prayed for a direction upon the respondents to consider her case for placement in the scale of Rs.6500-10500/- on the 'principle of equal pay for equal work in terms of the judgement of the Tribunal (Annexure A-18) with payment of all consequential benefits.

2. The facts of the case are that the applicant had initially joined the

Directorate of Extension as Senior Research Assistant (SRA) on 12.02.1975 in the erstwhile office of Regional Home Economist, Agra as direct recruit. Consequent upon abolition of the posts of 5 SRAs when the Test Kitchen Scheme was discontinued, she was rendered surplus in August 1990 and continued on supernumerary post. Three SRAs got accommodated in the post of RHE and another one got appointment in the Central Excise, Calcutta. The applicant got a temporary opportunity to officiate on ad hoc basis as RHE against leave vacancy of Dr. Tara Thomas from 14.05.1992. When she resumed duty after study leave on 15.3.1995 the applicant was again reverted to the supernumerary post of SRA.

3. Thus, she continued to draw pay and allowances against the supernumerary post of SRA in the pay scale of Rs.1640-2900/- (pre-revised). However, the recommendations of the 5th CPC as accepted by the Government became available on 30.09.1997 for implementation w.e.f. 01.01.1996. In the meanwhile, the applicant got an offer as Librarian in the pay scale of Rs.5500-9000/- in the National Building Organisation under the Ministry of Urban Affairs and Employment where she joined on 25.03.1997 and her continuance against supernumerary post got accordingly terminated. Since there was no specific recommendation for the Directorate of Extension by the 5th CPC, the normal replacement scale of Rs.5500-9000/- was allowed to her while drawing her pay and allowances against the supernumerary post of SRA as on 01.01.1996. However, the applicant represented for grant of pay scale of Rs.6500-10500/- as awarded on the recommendations of the 5th CPC to SRAs in the various other Departments under the Ministry of Agriculture. But the same was turned down by the order dated 17.5.2002 informing the applicant that the matter had been examined in the light of recent directions of Ministry of Finance in other similar cases and it was regretted that the higher pay scale of the post of SRA could not be granted. Subsequently, the applicant sought a copy of the advice of the Ministry of Finance in this regard but without result.

4. The applicant has, therefore, submitted that as on 01.01.1996, she was working on a supernumerary post of SRA. The duties and functions being

performed were similar to those of other SRAs and the salary being received was also in the pay scale of Rs.1640-2900/- applicable to SRAs. The recommendations of the 5th CPC for SRAs as accepted by the Government and extended to SRAs under the Ministry of Agriculture were for the higher pay scale of Rs.6500-10500/- and the applicant could not have been denied the same higher pay scale as was extended to the other SRAs based upon the principle of 'equal pay for equal work'. It is contended that the supernumerary post is just like any other post in so far as the job to be performed is concerned. The applicant was drawing pay scale of the post of SRA and therefore she could not be discriminated against on the ground that she was working against a supernumerary post. Learned counsel for the applicant, in this background, clarified that the applicant is seeking fixation of her pay on 01.01.1996 in the higher pay scale of Rs. 6500-10500 awarded to SRAs and continuation of the benefit of this pay scale until 24.3.1997 before her joining as Librarian on 25.3.1997 in the National Building Organisation so that further fixation of pay may follow as appropriate on the post of Librarian from 25.3.1997 onwards.

5. The applicant is aggrieved that her case was turned down by the letter dated 17.5.2002 which is a cryptic and non speaking communication. It is stated that on this point the applicant had come before the Tribunal in OA No. 3133/2002 which was decided on 20.10.2003 by directing the respondents to pass a fresh order on merit dealing with the contentions of the applicant regarding revision of pay scale by a detailed and speaking order. Accordingly, the respondents passed the speaking order on 03.02.2004 after giving an opportunity of personal hearing to the applicant. The following grounds have been taken therein while declining the request of the applicant:-

- i) The 5th CPC did not make any recommendation in respect of the post of SRA in the Directorate of Extension. In fact, no such post existed there as on 01.01.1996 and
- ii) Reliance has been placed on State of UP and others Vs. J.P. Chaurasia and others (1998) ATC 929 and another judgement to suggest that the matter of pay fixation and equation of pay are

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best left to be decided by Expert Committees. As such while admitting that the posts of SRA in other Directorates of the Ministry had been upgraded pursuant to the recommendations of the 5th CPC, the upgradation of the supernumerary post of SRA was not tenable and there was no case for grant of higher scale of pay of Rs.6500-10500/- to the applicant from 01.01.1996.

6. A reference has been made by the respondents in their reply to another OA No.489/1995 filed by the applicant, which was allowed with a direction to consider her case for appointment as RHE against regular vacancy in accordance with her seniority and on the same basis as in the case of others who had been rendered surplus. Evidently, the feeder cadre for promotion to RHE was that of the SRAs. The applicant could not get promotion and finally she got the offer as Librarian. The applicant was correctly granted normal replacement scale of Rs.5500-9000/- wherein her pay was fixed at the maximum of Rs.9000/- while authorizing stagnation increments in future. It is informed that subsequently the applicant was appointed as RHE on 04.6.1999 in the pay scale of Rs. 8000-13500/-.

7. The learned counsel for the respondents has stated that no similarity can be drawn with other posts of SRA elsewhere in the Department to seek higher pay scale of Rs. 6500-10500/- since there was no functional requirement for the post of SRA as on 01.01.1996 in the Directorate of Extension. However, the counsel for applicant has particularly relied upon three judgments of the Hon'ble Supreme Court and vehemently argued that the law supports the case of the applicant. We have perused these judgements.

(i) In Surinder Singh and another vs. The Engineer in Chief, CPWD and others A.T.R. 1986 SC 76 the Hon'ble Supreme Court having emphasized the importance of equality before law as per Article 14 and 39(d) of the Constitution of India observed that even if the appointment is not on a sanctioned post so long as the same duties are being performed the same salary and conditions of service must be given.

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(ii) In Y.K. Mehta and others vs. Union of India and others etc. etc., 1989 (1) SLJ 97 the Supreme Court held that when two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two in the matter of pay following the provision of Article 39 (d). The Court further observed that if the principle of 'equal pay for equal work' is not given effect to when the employees hold the same or similar posts, and also possess the same qualifications and do the same kind of work, it would be discriminatory and violative of Articles 14 and 16 of the Constitution.

(iii) In Secretary, Finance Department and others vs. West Bengal Registration Service Association and others 1993 Supp (1) SCC) 153 while acknowledging the prerogative of an expert body like the Pay Commission in matters of pay fixation, the Apex Court felt that Court's interference would not ordinarily be called for, unless there is unjust treatment by arbitrary State action or in-action. However, the Apex Court did not interfere in the matter wherein the claim was rejected on the ground that duties and responsibilities of the two posts were different.

We find that these cases are distinguishable on facts since there was no supernumerary post involved nor was there any SIU recommendation declaring the sanctioned posts to be surplus. However, it remains to be seen if the duties and responsibilities can be held to be the same in the present case and to what extent that would attract the ratio of the above judgements.

8. In this regard, there is a need to be clear about the nature and object of supernumerary posts. As observed from GIMF OM dated 13.3.1961 regarding creation of supernumerary posts appearing under GOI decisions in Chapter 14 of the Swamy's Manual on Establishment & Administration for Central Government Offices 9th Edn. 2003, no duties are attached to a supernumerary post because it is a shadow post. The officer, whose lien is maintained against such a post, generally performs duties in some other vacant temporary or permanent post. The supernumerary post is always a permanent post but created for a limited

period till the officer concerned is absorbed in a regular post. It is personal to the officer concerned and stands abolished when vacated. No extra financial commitment is involved in the creation of such posts in the shape of increased pay and allowances etc. It is, therefore, evident that if the supernumerary post occupied by the applicant was of SRA, it was only for the purpose of maintaining the lien of the officer and could not be said to have been a part of the working strength of the Department. Since the post of SRA stood abolished and no duties are attached to a supernumerary post, it would not follow that the applicant who was holding the supernumerary post of SRA till absorption in regular post elsewhere was performing the duties and functions of SRA on 01.01.1996 as in the case of other SRAs elsewhere in the Ministry of Agriculture.

9. It is also to be noted that there exist specific Govt. instructions on disposition of surplus staff while awaiting redeployment, which supplement GIMF OM dated 13.03.1961 and throw further light on the matter. These are contained in para 6 of Section IV under Chapter 50 of Swamy's Manual referred above which is the revised scheme for redeployment. The relevant sub paras read as under:-

"6.1 The members of the staff who are declared surplus with the prior concurrence of the Department of Personnel and Training or the Directorate General, Employment and Training, as the case may be, will be transferred to a 'Surplus Staff Establishment' which will be created to accommodate such surplus staff in the concerned Ministry/Department or Office, as the case may be. The posts held by the temporary, including quasi-permanent and officiating employees, declared surplus shall be transferred to such Establishment from the date on which their incumbents are declared surplus. In the case of surplus employees occupying permanent posts, their regular posts will be abolished from the date they are declared surplus and supernumerary posts created simultaneously in their lieu, in the same scale of pay and with the same designation in the Surplus Staff Establishment aforesaid.

6.2 On transfer to the Surplus Staff Establishment, the surplus employees will continue to receive pay and allowances in their previous scales, till they are relieved either to join another post or on their retirement, resignation, etc., whichever is earlier.

6.3.1.

6.3.2

6.4.1 Every surplus employee will, while borne on the Surplus Staff Establishment, keep attending office and report to the officer (s) designated for the purpose by the Ministry/Head of Department,


regularly, except when he has been granted leave of the kind due and admissible to him.

6.4.2 A surplus employee may, while awaiting redeployment be given by his Head of Department/Organization or other superior authority, alternative duties or charge of work, which – though not necessarily related to his earlier area of work – he can be expected to perform conveniently keeping in view his position, qualifications and experience. Such duties should be casual or supportive in nature so that the surplus employee can be relieved to join the alternative placement arranged for him by the Central Cell without any difficulty or loss of time.”

10. Although the respondents have not clearly indicated as to what was the precise nature of work that the applicant was doing while holding lien on the supernumerary post of SRA, there is also no material on record to establish that the applicant was performing the duties and functions of SRA. The applicant has referred to a judgement of this Tribunal enclosed with the application at Annexure-18 but there is no such Annexure. However, there is a judgement of the Principal Bench of the Tribunal at Annexure A-16 passed on 20.10.2003 in OA No.3133/2002 from which it appears that the applicant had claimed revision of pay scale on grounds of being similarly circumstanced but respondents had passed a non-speaking order. They were therefore directed to pass a speaking order on merit dealing with the contentions raised by the applicant. It is well settled that the principle of equal pay for equal work is not confined merely to the duties and responsibilities or designation of the post. The Hon'ble Supreme Court in Union of India vs. Tarit Ranjan Das (2003) 11 SCC 658 was dealing with a claim for parity in pay scale. The 5th Pay Commission having taken into account the relevant aspects of the matter had not found any justification. The Apex Court after having extensively considered the law on the subject held as under:

“9. Strangely, the Tribunal in the review petition came to hold that the Commission had not based its conclusion on any data. It is trite law that it is not open for any court to sit in judgement as on appeal over the conclusion of the Commission. Further, the Tribunal and the High Court proceeded as if it was the employer who was to show that there was no equality in the work. On the contrary, the person who asserts that there is equality has to prove it. The equality is not based on designation or the nature of work alone. There are several other factors like responsibilities, reliabilities, experience, confidentiality involved, functional need and requirements commensurate with the position in the hierarchy, the qualifications required which are equally relevant.”

11. In view of the above discussion, we are unable to appreciate the prayer of the applicant and find no irregularity in the action taken by the respondents to grant the higher replacement scale of Rs. 5500-9000/- from 1.1.1996 to the applicant while he was holding a lien on the supernumerary post of SRA. The application therefore cannot succeed and is dismissed. No costs.


(N.D. Dayal)
Member(A)


(Mrs. Meera Chhibber)
Member(J)

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