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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.570/2004

New Delhi, this the 10th day of **December**, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Malhotra, Member (A)

1. Rajveer Sharma
S/o Sh. Babu Lal Sharma
Manager, Holiday Home
(Labour Deptt. Govt. of NCT Delhi)
Bhara Mal Gher, Upper Road
Haridwar, Uttaranchal (Pin Code-249 401).
2. Prabhash Chandra Shastri
S/o Sh. Harish Chandra Shastri
Manager, Holiday Home
(Labour Deptt. Govt. of NCT, Delhi)
The Maal
Mussoorie (Pin Code-248 179)
Uttaranchal. ... Applicants

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Chief Secretary
Govt. of NCT of Delhi
Player Building
I.T.O., New Delhi.
2. Labour Commissioner
Govt. of NCT of Delhi
15, Sham Nath Marg
Delhi - 110 054. ... Respondents

(By Advocate: Ms. Renu George)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant No.1 was initially appointed as Care Taker on ad hoc basis in the Holiday Home, Haridwar in the year 1976 and Applicant No.2 was appointed as Care Taker in Holiday Home, Mussoori on 21.10.1982 on regular basis. Applicant No.1 was also regularized on 18.9.1982. Vide the orders passed on 1.7.1986 and



7.9.1986, Applicants No.1 and 2 were re-designated as Managers respectively.

2. By virtue of the present application, they seek the following reliefs:

(i) To grant the pay scale of Rs.7500-12000 w.e.f. 1.1.96 as recommended in the OM dated 6.2.89 w.e.f. 1989, as granted to the counterparts in other Departments performing the same duty as the applicants, on the Principle of Equal Work for Equal Pay.

(ii) The respondents may be directed to grant to the applicants their Promotion and Financial Upgradation as per the ACP Scheme.

(iii) The respondents may be directed to make provisions for Leave[medical/ Casual/Earned /half Pay Leave/EOL etc] as applicable to other Govt. Employees, with retrospective effect and for the past period of service, grant suitable number of Leaves.

(iv) To grant arrears of pay/salary to the applicants w.e.f. their respective dates of appointment with interest @ 24% p.a. till the actual date of payment.

(v) The respondents may also be directed to grant overtime allowance, hard duty allowance, and special duty allowance for working for 24 hours till today.

(vi) Any other relief, which this Hon'ble Tribunal may deem fit & proper in the circumstances of the case;

(vii) Cost of the proceedings may also be awarded in favour of the applicant and against the respondents."

3. It is asserted that both the applicants are compulsorily duty bound to reside in the respective Holiday Homes and look after the same round the clock. There is no provision of any rest or break and they have to perform all the duties of Cashier. There was only one Peon-cum-Chowkidar and he does not stay for 24 hours but only he has a 12 hours duty.

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4. It is contended that other departments like Ministry of Urban Affairs and Employment, CPWD, Directorate of Estate have their Guest Houses which are maintained by the Estate Managers in Mumbai and Calcutta. They are in the pay scale of Rs.7500-12000 with Special Pay of Rs.150/- Per Month while the applicants are drawing much lower scales. They also contend that they are not getting any overtime allowances. No leave is given to them including the weekly off and national holidays.

5. Earlier the applicants had filed Original Application No.1772/96 which was disposed of on 18.12.1996 directing the applicants to make a consolidated application in this regard. In 1997, the applicants had filed another OA 1136/97 which was disposed of on 13.1.1998 directing the respondents to examine the applicants' case giving liberty to agitate the OTA and better service conditions in accordance with law.

6. Applicants further claim that on 9.8.1999, the Department of Personnel & Training, Government of India had issued an Assured Career Progression Scheme. According to that Scheme, after 12 years of service an employee had been entitled to first financial upgradation and another one after completion of 24 years of service. Even the benefit of the abovesaid Scheme has been denied to the applicants. It is in this backdrop that the aforesaid reliefs are being claimed.

7. In the reply filed, respondents contend that applicants were initially appointed as Care Taker in the scale of Rs.330-560. They have been granted the benefits of the ACP Scheme. It is denied that the applicants can claim parity of scale with Manager Holiday Home of different other places. It is denied that applicants



are not being granted any holiday and plea has been raised that time and again, they had applied for leave which had been granted and sanctioned. It is imperative of the applicants to stay in the Holiday Home 24 hours and this is one of the conditions of service.

8. We have heard the parties' counsel and have seen the relevant record.

9. It is not in dispute that the designation of the applicants from Care Taker had been changed to Manager. Merely because the nomenclature of the post has been changed, does not entitle a person to get a revision of the pay for the post. Necessarily, said fact is of little avail.

10. On behalf of the applicants, it has been vehemently urged that the scale of other Estate Managers who are managing the Government estates at Mumbai and Calcutta are much higher. They are in the scale of Rs.7500-12000 from 1.1.1996 and that the applicants are being discriminated.

11. We know that the Supreme Court in the case of **UNION OF INDIA & ANR. v. P.V.HARIHARAN & ANR.**, 1997 (2) SLR 232 had gone into this controversy. It came heavily on the Tribunal fixing the different scales of certain Government officials. It held:-

“Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by the Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put

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forward their claims on the basis of such change. The Tribunal should realize that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely revising and enhancing the pay scales across the exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

More recently in the case of **STATE OF HARYANA AND ANOTHER**

v. **HARYANA CIVIL SECRETARIAT PERSONAL STAFF**

ASSOCIATION, (2002) 6 SCC 72, once again the same question had cropped up for consideration. The Supreme Court held that the pay structure is evolved keeping in mind several factors such as method of recruitment, level at which the recruitment is made, the hierarchy of service in a given cadre, minimum educational qualification, the nature of duties and responsibilities and employer's capacity to pay etc. All these factors have to be kept in view and further that the court should approach such matters with restraint and interfere only in extreme cases where there is total discrimination in this regard. In para 10, the Supreme Court held:-

"10. It is to be kept in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. While taking a decision in the matter, several relevant factors, some of which have been noted by this Court in the decided case, are to be considered keeping in view the prevailing financial position and capacity of the State Government to bear the additional liability of a revised scale of pay. It is also to be kept in mind that the priority given to different types of

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posts under the prevailing policies of the State Government is also a relevant factor for consideration by the State Government. In the context of the complex nature of issues involved the far-reaching consequences of a decision in the matter and its impact on the administration of the State Government, courts have taken the view that ordinarily courts should not try to delve deep into administrative decisions pertaining to pay fixation and pay parity. That is not to say that the matter is not justiciable or that the courts cannot entertain any proceeding against such administrative decision taken by the Government. The courts should approach such matters with restraint and interfere only when they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to a section of employees and the Government while taking the decision has ignored factors which are material and relevant for a decision in the matter. Even in a case where the court holds the order passed by the Government to be unsustainable then ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same. As noted earlier, in the present case, the High Court has not even made any attempt to compare the nature of duties and responsibilities of the two sections of employees, one in the State Secretariat and the other in the Central Secretariat. It has also ignored the basic principle that there are certain rules, regulations and executive instructions issued by the employers which govern the administration of the cadre."

It is obvious from the aforesaid, therefore, that it is not for this Tribunal to fix the pay scales.

12. In the present case before us, the applicants feel shy of pleading and bringing to our notice as to what are the qualifications for those Managers who are already working in the CPWD Guest House in Mumbai and Calcutta and they are also reluctant to tell this Tribunal as to whether the Estate Managers of CPWD Guest Houses in Mumbai and Calcutta are also

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performing the same duties like them. Their duties and responsibilities are anybody's guess. When all these facts are not forthcoming, it is not for this Tribunal to fix the pay scales. The plea must fail. It is not shown to us that there is any hostile discrimination qua the applicants and, therefore, principle of **'equal pay for equal work'** should be pressed into service.

13. In that event, it was contended that the applicants are not being granted leave. But this plea has been vehemently controverted and the respondents have placed on the record the leave account of the applicants. It clearly indicates that leave had been availed and it is being accumulated. Plea ex-facie is not only incorrect but also must be rejected.

14. Another limb of the same argument that promotional avenues are being denied and the applicants are not even being given the ACP Scheme benefit, the respondents had drawn our attention that ACP Scheme benefit is being accorded and that the applicants have been granted the financial upgradation. A copy of the order has been placed on the record which indicates that both the applicants have been granted the financial upgradation. Thus this particular plea must be held to be not based on facts. Necessarily, it should be rejected.

15. The only other plea raised thus was that the Over Time Allowances was not being granted and applicants are made to work round the Clock.

16. A representative order in the case of Raj Veer Sharma, dated 24.9.1976 is placed on the record by the applicants themselves. The operative part of Paragraph 2 of the same reads:




"2. The terms and conditions are as follows:-


- i) The appointment is on adhoc basis and may be terminated at any time by one month's notice given by either side viz. the appointee or the appointing authority without assigning any reason. The appointing authority, however, reserves the right to terminating the services of appointee forthwith or before expiration of the stipulated period of notice by making payment to him of a sum equivalent to the pay for the period of notice or unexpired portion thereof.
- ii) The appointee carries the liability to service at 'Holiday Home' or in any other post under the Delhi Administration.
- iii) No benefit of seniority for the post or similar type of the post shall be given to him.
- iv) He shall submit a fidelity bond of Rs.5000/- (Rs.Five thousand) in favour of Labour Commissioner, Delhi Administration.
- v) During his tenure as Care Taker he shall have to reside in the Holiday Home to look after the Home 24 hrs. He shall be provided one roomed accommodation on payment of 10% of his pay i.e. Rs.37.50 p.m."

17. It clearly shows that it is a part of the contract that applicants have to reside within the Holiday Home, have to serve there and make themselves available all the time. In that view of the matter, once it is a contract between the parties and the applicants do not assail the same, we find no reason to interfere to hold that applicants are entitled to Over Time Allowance.

18. No other arguments have been raised.

19. For these reasons the Original Application being without merit must fail and is dismissed.


(S.K. Malhotra)
Member (A)


(V.S. Aggarwal)
Chairman