

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1102 /1992

Date of Decision: 22 - 4 - 1998

Shri Sushil Basumatari & Ors.
(By Advocate Shri K. N. R. Pillai
versus

APPLICANTS

Union of India & Ors.

RESPONDENTS

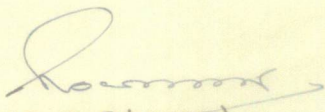
(By Advocate Shri K. R. Sachdeva

CORAM:

THE HON'BLE ~~Smt.~~ Smt. Lakshmi Swaminathan, Member (J)

THE HON'BLE SHRI S. P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES ✓
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member(A)
8.4.1998

Cases referred:

1. Bhagwan Dass V. State of Haryana 1987(4) SCC 634
2. State of UP V. J. P. Chaurasia, 1989(1) SCC 121
3. Meva Ram Kanojia V. AIIMS, 1989(2) SCC 235
4. Doordarshan Cameramen Welfare Assn. V. UOI JT 1990(2) SC
5. Delhi Vet. Association V. UOI 1984(3) SCC 1
6. Secretary/Finance V. West Bengal Regn. Assn. & Ors.
AIR SC 1203
7. State of West Bengal V. Hari Narayan Howal 1994 Col. 27
524)
8. State of MP V. Pramod Bharatya & Ors. (1993) 1 SCC 539
9. State of Haryana V. Ram Chander JT 1997(5) 217

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

OA No. 1102/1992

New Delhi, this the **22nd** day of April, 1998

Hon'ble Mr. Lakshmi Swaminathan, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

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1. Sushil Basumatari s/o K.C. Basumatari,
E-19, Press Place,
Minto Road, New Delhi.
2. Umesh Kumar s/o Vishwanath Sharma,
1/2667, Gali No.2, Ram Nagar,
Shahdara.
3. Ashok Kumar s/o Bhoop Singh,
5386, Ladu Ghati, Pahar Ganj,
New Delhi.
4. Jagatar Singh s/o Gurjeet Singh,
A-179, New Moti Nagar, New Delhi.
5. Shayam Sunder s/o Ratan Lal,
F-1815, Netaji Nagar,
New Delhi.
6. Ramesh Chand s/o Dharooov Dutt,
I/138, Press Colony, Mayapuri,
New Delhi.
7. Puran Lal s/o Khushali Ram,
1229, Sector III, Pushp Vihar,
New Delhi.
8. Pramod Kumar Mathur s/o P.C. Mathur,
17/199, Mandir Marg, New Delhi.
9. Ramesh Kumar s/o Rishal Singh,
B-33 A Bhagarathi Vihari, Delhi.
10. Ram Mehar Rathi s/o Tinu Ram,
R-2-26P/Indira Park, Palam Colony,
Delhi Cantt. ...Applicants

(By Advocate Shri K.N.R. Pillai)

Versus

Union of India through

1. Secretary,
Department of Culture,
New Delhi.
 2. The Director General,
National Archives of India,
New Delhi. ...Respondents
- (By Advocate: Shri K.R. Sachdeva)

O R D E R

Hon'ble Shri S.P. Biswas, Member (A)

All the ten applicants, working as Binders in the National Archives of India, are aggrieved by rejection of their three representations made in 1990 (anneuxres A-3, A-4 & A-5) by the respondents denying the scale of pay allowed to the Binders in the Archeological Survey of India, though

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both the groups are doing the same work. In short, the applicants allege that these two wings under the same umbrella organisation i.e., the Department of Culture are being unjustifiably treated differently in the matter of pay scales. The scale of pay prescribed for the Binders in the National Archives of India stood at Rs. 225-5-260-6-290-EB-308 which, after the Fourth Pay Commissions's recommendations, has been replaced by scale of Rs. 825-1200/-. Whereas, their counterpart Binders working in the sister organisation of Archeological Survey under the same very Department of Culture have been allowed scale of 320-400 and the replacement scale of which is Rs. 1150-25-1500/-. Consequently, the applicants have prayed for issuance of direction by the Tribunal to the respondents to modify the scale of pay of the Binders in the National Archives of India from 1.1.1986 from the existing scale of Rs. 825-1200/- to Rs. 1150-1500/- which is the revised scale for the corresponding category in the Archeological Survey.

2. The applicants have sought to justify their claim on a variety of grounds. But for the sake of brevity, we intend to bring out only those considered relevant for our purpose and have been mainly relied upon by the learned counsel for the applicants. It has been contended that the Defence Ministry have favourably revised the Fourth Pay Commission's recommended scale for their Binders from Rs. 1150-1500 to Rs. 1200-2800/-. Similarly, the Directorate of Printing in the Ministry of Urban Affairs have changed the scale of pay for the Binders from Rs. 1150-1500 to Rs. 1200-2040/-. The Binders working in the Lok Sabha Secretariat and in the Department of Statistics and Intelligence have been equally favoured with suitable

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upgradation in respect of their pay scales. Thus, while comparing with the Binders working in other Government departments as aforesaid, the applicants feel aggrieved of being saddled wrongly with the lower scale of pay at Rs.825-1200.

3. The learned counsel for the applicant argued strenuously to say that though 'equal pay for equal work' is only a directive principle of State policy, it becomes enforceable when violation of it infringes fundamental rights under Article 14 & 16 of the Constitution. Drawing strength from the decisions of the Hon'ble Supreme Court in the cases of (i) Bhagwan Dass vs. State of Haryana, 1987 (4) SCC 634; (ii) State of U.P. Vs. J.P. Chaurasia, 1989(1) SCC 121; and (iii) Meva Ram Kanojia vs. AIIMS, 1989(2) SCC 235, the learned counsel for the applicants contended that the doctrine of "equal pay for equal work" is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities but they are denied equality in matters relating to scales of pay. In such cases, Court could grant relief by applying the doctrine on valid grounds.

4. As per the learned counsel, the applicants' case is covered on all fours under the decisions of the Apex Court in the case of Doordarshan Cameramen Welfare Association vs. Union of India, JT 1990 (2) SC 118. In that case, the Supreme Court held that Sound Recordists, Cameramen and Lighting Assistants etc. are entitled to the same scale being enjoyed by their counterparts in the Film Division under the same Ministry of Information & Broadcasting.

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5. The counsel for the applicants further contended that the pattern of recruitment applicable to them, is exactly the same like the Book Binders in the Archeological Survey of India. In both the Units, the percentages of direct recruitment and promotion stand at 50% in each. The educational qualifications are also the same in both the organisations. Infact, it was contended that the qualification prescribed for the applicants' category are even slightly higher because it includes three years' diploma in binding or one year certificate in binding with three years practical experience. As against this, the educational requirement in the Archeological Survey is only three years practical experience. The duties and responsibilities of both the categories are the same. Applying the criteria laid down by the Hon'ble Supreme Court, in the case of Doordarshan Cameramen (supra) there is no reason at all for discriminatory treatment to the applicants in terms of scale of pay now being given to them, the counsel argued.

6. In the counter, the respondents have opposed all the pleas taken by the applicants. The pre-revised scale of the Book Binders in the National Archives of India was Rs. 225-308/- whereas it was Rs. 320-400/- in the case of Senior Book Binders in the Archeological Survey and the Pay Commission had given appropriate replacement scales in both the cases and hence, the question of placing the Binders of the National Archives of India at par with the Senior Book Binders of the Archeological Survey of India does not arise. The respondents would submit that the post of Senior Book Binders in the Archeological Survey are attached with its Central Archeological Library and, therefore, the

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responsibilities of the Binders in the National Archives of India cannot be compared with their counterparts in the Archeological Library. Moreover, senior Book Binders in the Archeological Survey also have the responsibilities of working as Store Keepers, carry the financial burden of undertaking purchases, maintaining stock of binding materials alongwith preparation of estimates for effecting negotiations needed for purchase of the aforesaid store materials. Thus, the respondents deny that the duties and responsibilities of these two groups are identical in all respects.

7. We shall now bring out the legal position on this subject.

The Hon'ble Supreme Court in its decisions in the case of (i) Delhi Vet. Assolciation vs. UOI 1984(3) SCC 1, (ii) Secretary/Finance Vs. West Bengal Registration Asslciation & Ors. AIR 1992 SC 1203 and (iii) State of West Bengal vs. Hari Narayan Bhowal (1994 Col. 27 ATC 524), has laid down the parameters/factors to be considered while evolving appropriate pay scale for a group of class of employees. These include method of recruitment, minimum educational and technical qualifications required, nature of duties (both quantitative and qualitative) and responsibilities, heirarchy of service in the given cadre, avenues for promotion, horizontal and verticle relativity with similar jobs, public dealings, satisfaction levels and employer's capacity to pay. In addition, the degree of skill, strain of work, experiences involved, trainings required, disagreeeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission,

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some of relevant factors which should be taken into consideration for fixing pay scales. Above all, there has to be a clear cut case of discrimination against those who are claiming such parity (emphasis added).

8. The Court/Tribunal should normally accept the decisions taken on the basis of recommendations of the Pay Commission (PC for short), which is an expert body to determine such matters. However, in some cases where it is found that for extraneous consideration by a subsequent State action or inaction favourable treatment has been given to some resulting in unfair treatment to others, the court may sometimes consider it necessary, for the purpose of providing justice, to interfere with the orders issued by the executives. A few such situations, without exhausting the list, could be as hereunder:

- (i) the PC omitted to consider the pay scales of some posts of any particular service, or
- (ii) the PC recommended certain scales based on no classification or irrational classification, or
- (iii) after recommendation of the PC was accepted by the Government, there is unjust treatment by subsequent arbitrary State Action/or inaction. In other words, there were subsequent State actions/inactions resulting in favourable treatment to some and unfair treatment to others.

9. The principle of equal pay for equal work can be forced only if the persons making such claims satisfy the Court that not only the nature of work is identical but in all other respects they belong to same class and there is no valid reason to treat equals as unequals. Unless a clear cut case is made out and the Court/Tribunal is satisfied that the scale provided to group of persons on the basis of material produced before it amounts to discrimination

without there being justification, Court should not take upon the responsibility of fixing up pay scale, especially when different pay scales have been laid down by the PC. In other words, 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 burden is precisely upon the petitioners to establish that there is a case for equal pay for equal work. If any authority is required for this proposition, this is available in case of **State of MP vs. Pramod Bharatya & Ors. (1993) 1 SCC 539** decided by the Hon'ble Supreme Court.

The claims of the applicants herein have to be judged in the light of the law/rules & regulations afore-mentioned.

10. From the materials placed before us and also the pleadings of the OA, there is no escape from the conclusion that the conditionality of minimum qualification and the nature of duties (quantitative) are identical. But the petitioners herein have not been able to establish that their case is identical to that of the senior Binders in the Archeological Survey of India in respect of (i) qualitative aspect of the work/responsibility and (ii) that there has been a discrimination.

11. The fact that the responsibilities of these two groups of Binders do differ is evident from the details of duties/responsibilities enumerated in respect of each. Those Binders in the Archeological Survey carry with their responsibilities of conducting purchases, maintenance of stock of binding materials and rendering timely accounts and submission of estimates. We also find that the provision

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under qualifications/experience differ in respect of both. In the case of the applicants it is middle school certificate (8th class) with one year certificate course in binding with one year practical experience of high class binding work. Whereas in the case of Archeological Survey - practical experience of three years of high class binding work/repair and handling of fragile documents etc. has been prescribed. These qualification look alike but they differ in respect of contents.

12. In the case decided by the apex court in **State of Haryana Vs. Ram Chander JT 1997 (5) 217** it has been held that "before a set of employees can claim parity of pay scales on the principle of "equal pay for equal work" it has to be shown by such claimants that both qualitatively and quantitatively the work which they do is of the same type and nature as that of their counterparts whose pay scales are pressed in service for getting the parity. Primarily it requires, among others, evaluation of duties and responsibilities of the respective posts. That cannot be determined by relying upon averments in affidavits of interested parties.

13. In the present case, what to speak of establishing the plea on qualitative similarity in respect of applicant's responsibilities, there was not even any oral submission about it in the **hearing**. During the course of arguments, the learned counsel for the applicants only mentioned that in terms of education and over all responsibility, the Binders under the National Archives have an edge over their

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counterparts in Archeological Survey of India but documents or materials were placed before us to substantiate this contention.

14. We find the job responsibilities, as described at appropriate annexures are distinct and appear to be qualitatively distinguishable based on requirements of the two cadres.

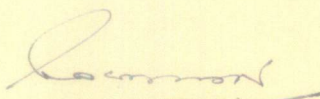
15. The applicants have also not placed sufficient materials to demonstrate that they have been discriminated. Discrimination starts when equals are treated as unequals. Determination of equality is the foundation of all such claims and that determination suffers badly in the present case. The applicants are aggrieved because of the respondents' orders dated 23.3.90, 6.4.1990 and 25.5.90 respectively. Apparently, these orders have been issued after the recommendations of the Fourth Pay Commission were implemented. If there had been any discrimination against them, it was open to the respondents to take up the matter with the Committee set up for the purpose of settling anomalies.

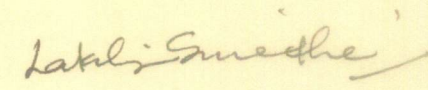
16. It may also be emphasised that in the process of adjudication by Courts/Tribunals, an anomaly in different services could get created of which court may not be conscious in the absence of all relevant materials being placed before it. Till the claimants satisfy on materials produced that they have not been treated as equal within the parameters of Article 14, the Tribunals/Courts have to go

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slow in issuing direction to treat them equals particularly when the controlling executive authorities and experts have found them not to be equals.

17. For the reasons aforementioned, the application fails on merit and deserves to be dismissed. We do so accordingly, but in the facts and circumstances of the case, without any order as to costs.


(S.P. BISWAS)
Member (A)


(SMT. LAKSHMI SWAMINATHAN)
Member (J)

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