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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.1759 of 1993

New Delhi, this the 13th day of December, 1993.

Hon'ble Mr Justice S.K.Dhaon, Vice Chairman.

Hon'ble Mr B.N.Dhoundiyal, Member(A).

Surya Narain Tiwari
S/O Shri Ganga Prasad Tiwari
R/O 5/117, Purana Kanpur.. ... Applicant.
(by Mr K.B.S.Rajan, Advocate)
vs.

1. The Chairman
Central Board of Direct Taxes
North Block
New Delhi.
2. The Chief Commissioner of Income Tax
Cadre Control Authority(Administration)
Kanpur Charge
16/69, Ayakar Bhavan
Civil Lines, Kanpur.
3. Director of Investigation(Income Tax Deptt.)
16/67,
Civil Lines, Kanpur. ... Respondents.
(by Mr V.P.Uppal, Advocate).

ORDER

B.N.DHOUNDIYAL, MEMBER(A)

Applicant, Shri Surya Narain Tiwari claims to have been discharging the duties of typist-cum-clerk since the date of his appointment with effect from 1-5-1979. His grievance is that he is being paid at present the salary of a Peon in the pay-scale of Rs.750-1200, while the typist-cum-clerks discharging the same and similar duties are being paid salary in the pay scale of Rs.950-1500. The following reliefs have been prayed for:

- a) direction to the respondents to regularise the services of the applicant as typist-cum-clerk(or Lower Division Clerk) and pay him the same scales of pay, allowances and other

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benefits which are admissible and are being paid to the Lower Division Clerks; and

- b) direction to the respondents to regularise the services of the applicant w.e.f. 1979 on the post of Lower Division Clerk/typist-cum-clerk, i.e. the date from which he has been discharging the duties of Clerk-cum-Typist.

2. In the counter filed by the respondents, the main averments are these. The applicant was working as contingent paid worker in the Income-tax Department and before regularisation as group 'D' employee, he was getting a minimum of Group D pay of Rs.750/- per month. They have denied that he has worked as typist from the date of his appointment and have stated that there is no post of Typist in the Income-tax department and this work is being done by the Lower Division Clerks. The post of L.D.C. is filled up 90% through direct recruitment through Staff Selection Commission and 10% by promotion from amongst Group 'D' employees subject to certain conditions. No appointment order to work as contingent paid typist was ever issued. The applicant while working with his superiors may have assisted them in the work of typing or any other work whatsoever, but it was absolutely in his personal capacity and purely on voluntary basis. He might have done some typing work here and there on his own volition for practising on the typing machine in order to gain speed in typewriting.

3. We have gone through the records of the case and heard the learned counsel for the parties.

4. Relying on a number of judgments of this Tribunal and the Supreme Court, the learned counsel

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for the applicant contended that since he was working in fact as typist, denial of pay equal to this category to him would be in violation of the principle of 'equal remuneration for equal work'. He also brought to our notice ~~through~~^{by} certificates given by the officers of the Income-tax Department in one of which, it is mentioned that the applicant has "good knowledge of typing" (English and his services have also been utilised in this respect from time to time)". According to him, this clearly shows that he was engaged as typist. The learned counsel for the respondents has cited a number of judgments wherein it has been held by the Supreme Court that the principle of "equal pay for equal work" has no mechanical application in every case of similar work and so long as it is not a case of discrimination under Article 14 of the Constitution, the abstract doctrine of equal pay for equal work as envisaged in Article 39(d) of the Constitution has no manner of application nor it is enforceable in view of the article 37 of the Constitution. It was also observed by the Supreme Court in Champak Lal vs. Union of India, AIR 1964 SC 1854 that the quality of work is an essential element in determining whether the work is equal or not. In this case, the applicant was regularised as Group-D worker as early as on 28.4.1987. He accepted the appointment without raising any objection that he was doing typing work and he should be considered for the appointment in group-C Cadre. Even the certificate issued to him in his personal capacity, the Assistant Commissioner, Income-tax has not categorically stated that he has been working as typist. He has only stated that his services have been utilised in this respect from time to time. It is further made

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clear from a list of duties of the Lower Division Clerk in the Income Tax Department (Ann: R-1) that it is not only the typing work but a number of other duties that are assigned to them. We, therefore, hold that the applicant has failed to establish that he was appointed as typist/stenographer paid out of contingency. He has to wait for his turn for taking advantage of promotions to the Group-C post for which 10% of the vacancies are earmarked. The application, therefore, fails and is hereby dismissed.

4. There will be no order as to costs.

B. N. Dhoundiyal
(B.N.Dhoundiyal)
Member(A).

S.K. Dhaon
(S.K.Dhaon)
Vice Chairman

Dec 13, 1993.
/sds/