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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.368 of 1987

S.M.H. Kazmi Applicant

Versus

Union of India & Another Opposite Parties.

Hon. Justice K.Nath, V.C.
Hon. Ajay Johri, A.M.

(By Hon. Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act XIII of 1985, filed on 20.4.87, is for obtaining parity of pay scale and of arrears of pay with effect from 28.7.1981.

2. The applicant is working as Physical Training Instructor in the Indian Forest College at Dehradun U.P. in the scale of Rs. 550 - 900 for imparting training to the Indian Forest Service Officers of the All India level. During the applicant's tenure as such posts of Physical Training Instructor were created in the State Forest College at Barnihat (Assam) on 28.7.1981 in the scale of Rs. 650 - 1200. Similar posts were created in Coimbatore (Tamil Nadu) in 1980 and in the State Forest College, Dehradun in 1981. The Indian Forest College, Dehradun as well as the State Forest Colleges in Barnihat, Coimbatore and Dehradun are creations of the Govt. of India under the Ministry of Food and Agriculture.

3. The applicant's case is that the post of Physical Training Instructor held by him in the Indian Forest College at Dehradun has similar service

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rules, modes of recruitment, qualification, duties and responsibilities as those appurtenant to the corresponding post of Physical Training Instructor at the State Forest Colleges referred to above, but he has been discriminated against inasmuch as the scale of pay of his post is Rs. 550 - 900 while that of the State Forest Colleges is Rs. 650 - 1200 (vide para 6(viii)). In para 6(x) he says that he had made a representation for obtaining parity in the pay scales and opposite party No.2, the President of the Forest Research Institute and Colleges recommended the applicant's case for parity by a letter dated 26.12.83 (Annexure-4) with the observation that the applicant's duties were indeed of a higher nature than those of the Physical Training Instructor of the State Forest Colleges. In para 6(xiv) he mentioned that the Director of Indian Forest College had also recommended the applicant's case by a letter dated 25.7.1986 (Annexure 6 to the Govt. of India. However, the Govt. having refused to give parity, he filed the present application for obtaining reliefs mentioned above.

4. In the Counter Affidavit on behalf of Union of India, Opposite Party No.1, the facts stated by the applicant were basically admitted in paragraphs 8, 9, 10 and 12. The stand taken by the Opposite Party No.1 is that the applicant is not entitled to parity because of difference in qualifications requisite for the post of Physical Training Instructor.

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The position is stated in para 12 in the following words :-

" The applicant cannot claim parity with the P.T. & Games Instructors working in SFS Colleges simply because he is performing same nature of duties because the qualification and experience required for the posts are different."

5. It is clear, therefore, that so far as the performance of job duties, mode of recruitment, service rules and responsibilities are concerned, they are the same between the two sets of Physical Training Instructors; the controversy is confined to the requisite qualifications for the two posts.

6. The qualifications for the post of Physical Training Instructor in the Indian Forest College, Dehradun where the applicant is working, are contained in Annexure-1 and those concerning the State Forest Colleges are contained in Annexure-2.

7. In Annexure-1 at Sl.No.6 the qualifications are described as follows :-

(i) A degree in Arts or Science with a Diploma in Physical Education from a recognised Institute or equivalent.

OR

A degree in Physical Education from a recognised University/Institution.

(ii) About 3 years experience in imparting Physical Education in a recognised Institution.

(Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified).

8. In Annexure-2 the qualifications are described as follows :-

- (i) Master's degree in Physical Education from a recognised University/Institute or equivalent,
OR
 - (a) Degree from a recognised University or equivalent; and
 - (b) Degree or equivalent Diploma in Physical Education from a recognised University/Institute or equivalent;
- (ii) 5 year's experience of imparting training in Physical Education in a recognised Institution.

NOTE:1. Qualifications are relaxable at the discretion of the UPSC in case of candidates otherwise well qualified.

2. The qualification(s) regarding experience is/are relaxable at the discretion of the UPSC in the case candidate belonging to SC & ST if, at any stage of selection, the UPSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.

9. It will be seen that the qualifications for the two types of posts are of two kinds :

- (a) Academic qualification, and
- (b) Experience qualification.

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10. The minimum requisite academic qualification for the post of Physical Training Instructor, Indian ^{College} Forest is a degree in Arts or Science with a diploma in Physical Education from a recognised Institute or equivalent. Similarly, the minimum academic qualification for the post of Physical Training Instructor for the State Forest Colleges is a degree from a recognised University or equivalent and a degree or equivalent diploma in Physical Education from a recognised University/Institute or equivalent. These two sets of qualifications are identical in so far as they contemplate a graduation degree from a University coupled with a diploma in Physical Education from a recognised Institute or equivalent. As a principle ^{for} governing parity, it is not necessary that all the alternative academic qualifications must be identical; it is enough if the minimum academic qualification is identical. This situation will be clear from the decision of the Supreme Court in the case of Jaipal and Others Vs. State of Haryana and Others (1988)3 SCC 354 (para 9).

11. The real controversy is confined to the qualification regarding experience. The experience qualification for the post of Physical Training Instructor of the Indian Forest College in Annexure-I is "about" 3 years experience, but in respect of those of State Forest Colleges is 5 years experience. It is noticeable that while in respect of the former the period of three years is described to be the approximation as is apparent from the use of the word "about",

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in the case of the latter it is a definite 5 years experience. It is also noticeable that in both the cases all the qualifications are relaxable at the discretion of the U.P.S.C. in the cases of candidates otherwise well qualified.

12. The learned counsel for the applicant says that the schedule of eligibility, qualifications etc. in Annexure-1 concerning the Physical Training Instructor of the Indian Forest College was prepared much before the revision of pay scales because the scale indicated therein is only Rs.350-25-575 whereas the schedule of criteria of eligibility, qualifications etc. of Physical Training Instructors of State Forest College contained in Annexure-2 came into being after the revision of the scales so that the schedule sets out that scale of Rs. 650 - 1200. It is urged that the need of appropriate modification in Annexure-I has escaped notice. It is pointed out that Indian Forest College imparts training to the officers of the All India Forest Service and therefore fulfilling the object of a higher class of trainees as compared with the State Forest Colleges who impart training only to the officers of State level in Forest Service. He says that in this sense the post held by the applicant is of greater importance and higher responsibility than the corresponding post held in the State Forest Colleges. The learned counsel for the opposite parties contends that even so the rules, as they stand, prescribe the lesser duration of experience for the

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post of Physical Training Instructor in the Indian Forest College as compared with that of State Forest Colleges and therefore it must be held that the latter post required higher experience than the former post. It appears to us that the requisite difference of two years experience between the two posts is not of much importance in so far as the question of parity in pay is concerned. The basic concept of 'equal pay for equal work' aimed at by Article 39(d) of the Constitution of India is the similarity of the posts so far as the work involved therein is concerned. If two posts are under two different Wings of the same Ministry and involve performance of the same nature of duty, they ought not to be discriminated in the matter of pay as held in the case of Y.K.Mehta and Others Vs Union of India (1988) Supplement SCC 750. It must be mentioned at-once that the decision of the Supreme Court also refers to the similarity of qualifications. Indeed, there can be no doubt, that if qualifications are the same then the claim of parity cannot be resisted if the posts are of a similar nature and involve same kind of work. The concept of parity is drawn from the principles of fairness as contra-distinguished from arbitrariness in the light of the provisions of Article 14 and 16 of the Constitution of India. It would be fair in the particular facts and circumstances of a case to see whether the particular type of qualification involved in the two posts is such as may result in unfairness and discrimination where other things are equal.

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13. In the case of State of Mysore Vs. B. Basayalingappa 1986 (4) SLR 169 the Supreme Court had the occasion to examine the question of parity of pay of Workshop Instructors. Such Workshop Instructors who were diploma holders were given a pay scale of Rs. 150 - 320 while certificate holders were given scale of Rs. 150 - 250. On a revision of those scales the Workshop Instructors with second class diploma or equivalent qualification with ten years experience were given a scale of Rs. 260 - 500 which was refused to certificate holders. It was contended on behalf of the Govt. before the Supreme Court that it was permissible to provide for different pay scales on the basis of difference in educational qualification for the purposes of Article 14 of the Constitution of India. The Supreme Court did not find it necessary to examine the question whether on the basis of different educational qualifications, different pay scales could be prescribed. But the contention that diploma is treated to be higher qualification than a certificate was repelled on the ground that neither there was any curriculum on record nor any other material to draw that inference. The Great emphasis was laid upon the admitted fact that at the time of the initial recruitment, a diploma holder as well as the certificate holder both were entitled to be recruited as Instructor on the same scale of pay, indicating that in the early days diploma and certificate were considered to be alike. The Supreme Court upheld the order of the High Court granting parity to the certificate holders ^h qua the diploma holders.

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14. The facts of that case are somewhat different from the facts of the present case because the two posts of Physical Training Instructors of the two Institutions were not on the same pay scale. Nevertheless, there is a patent anomaly in the matter of duration of required experience inasmuch as only about three years experience was considered requisite for a Physical Training Instructor who trained the Forest Officers of All India level whereas the five years experience was required for Instructors who trained the Forest Officers of the State level. We may take judicial notice of the fact that, by and large, the scales of pay admissible to employees concerned with the affairs of the Union Government are higher than those concerned with the affairs of the State Government; a reversal of the trend is prima facie anomalous.

15. It is also difficult to appreciate that the difference of two years practical experience envisaged for recruitment to the two posts would really have much bearing on the job performance after the employees have put in a numbers of years of service. The deficiency, if any, in the period of experience at the time of recruitment, would have been more than made up in the long years of continuous service.

16. It is also admitted that the post of Physical Training Instructor of the Indian Forest College at Dehradun held by the applicant is the only post of

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its kind in the Institution. On a careful consideration of all the features, we are of the opinion, that in the particular facts of this case justice and fairness demand that the applicant should be given a parity in his pay scale with the Physical Training Instructors of the State Forest Colleges. We should like to make it clear that we do not say that the requisite period of experience as an element of qualification for eligibility is not material; but having regard to the particular features of the present case we are satisfied that this difference should not stand in the way of the applicant getting the parity.

17. The applicant has claimed parity with effect from 28.7.81 when the Physical Training Instructor of State Forest College at Barnihat (Assam) was given appointment. We notice that the Supreme Court have usually adopted the first day of the month in which the claim is filed as the date with effect from which parity may be given, for example Y.K.Mehta and Others Vs. Union of India (1988) Supplement SCC 750 (para 12). We should adopt that very basis for the present case.

18. The application is allowed. The applicant is held to be entitled to pay in the scale of Rs.650-1200 for the post of Physical Training Instructor in the Indian Forest College at Dehradun, U.P. and the opposite parties are directed to fix his pay accordingly with effect from 1.4.1987. <sup>and allowances etc
and pay arrears as well. ^ m</sup> Parties shall bear their costs.

~~3 MRS. S. H. S.~~
Member (A)

Dated the 11 May, 1989.

~~H. M. S.~~
Vice Chairman