

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 18th day of November, 1998

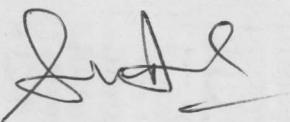
Original Application No. 1151 of 1992

District : Kanpur

CORAM :-

Hon'ble Mr. S. Dayal, A.M.
Hon'ble Mr. S.K. Agrawal, J.M.

1. Narendra Kuma Lal,
Son of Shri Shiv Shanker Lal,
working as Mess Clerk,
No. 1 Senior Non-Commissioner Officers Mess,
A.F. Station, Chakeri, Kanpur.
2. Shree Prakash Savita,
Son of Shri Jwala Prasad Savita,
Working as Mess Clerk,
No. 2 Senior Non-Commissioner Officer's Mess,
A.F. Station, Chakeri, Kanpur.
3. Ram Biles, Son of Shri Pyare Lal,
working as Peon (Lascar),
A.F. Station, Chakari,
4. Ram Kripal, Son of
Shri Ram Sewak,
Working as Mess Waiter,
Senior Non-Commissioner Officer's Mess,
A.F. Station, Chakeri, Kanpur.
5. Saravjeet Son of Shri Shyam Pher,
Working as Mess Waiter,
Senior Non-Commissioner Officer's Mess,
A.F. Station, Chakari, Kanpur.
6. Mauji Lal, Son of Shri Ram Lal,
Working as Mess Waiter,
Senior Non-Commissioner Officer's Mess,
A.F. Station, Chakari, Kanpur.


(Sri M.S. Negi, Advocate)

..... Applicants

Versus

1. Union of India, through Secretary,
Ministry of Defence, New Delhi.

2. Air Officer Commanding,
A.F. Station, Chakeri, Kanpur.
(Sri N.B. Singh, Advocate)

• • • • Respondents

O R D E R

Hon'ble Mr. S.K. Agrawal, J.M.

In this OA, the applicants make a prayer to direct the respondents to award the same pay scale to the applicants as other class III and IV employees of the same establishment are getting and to quash the show cause notice against the applicants dated 22-2-1992.

2. The brief facts of the case as stated by the applicants are that the applicant no.1, who was appointed overtime Mess Clerk w.e.f. 1-11-1982 in the Senior Non-Commissioned Officer's Mess, Air Force Station, Chakeri, District Kanpur. The applicant no.1 thereafter had been continuously working as over time Mess Clerk at Senior Non-Commissioner Officer's Mess, Air Force Station, Chakeri, Kanpur. It is stated that applicant no.2 was appointed over time Mess Clerk in Senior Non-Commissioner Officer's Mess No.2, Air Force Station, Chakeri, Kanpur on 3-12-1984, and had been continuously working in the same mess since his appointment on 3-12-1984. The applicant no.3 was appointed as peon (Lascar) in Senior Non-Commissioned Officer's Mess, Air Force Station, Chakeri, Kanpur in the year, 1984. Similarly, the applicant nos.4 and 5 were also appointed as Mess Waiters in the year, 1990 and have been working continuously on the same post. The applicant no.6 was appointed in the year, 1982. All the applicant nos.3 to 6 are working as Class IV employee as Mess Waiters in



in the same Mess since their appointment. It is stated that the applicant no. 1 was given only a consolidated amount of Rs.300/- per month at the time of appointment and thereafter in the year, 1984, the applicant no. 1 was given pay of Rs.350/- and the total pay including Dearness Allowance and other allowances was Rs.475/- after the pay of applicant no. 1 was fixed at Rs.740 in the year, 1986. The applicant no. 2 was initially given the pay scale of Rs.350-700 plus other allowances. Since the year 1984 the applicant no. 2 is also getting the pay scale of Rs.400/- plus other allowances i.e. the total amount of Rs.740/- only. It is also submitted that the applicant nos. 2 to 6 are Class IV employees in the Mess and are only getting an amount of Rs.150-200 since their appointment. It is submitted that applicant nos. 1 and 2 were appointed after selection and the Selection Board approved their appointment. It is also stated that applicant nos. 1 and 2 are Mess Clerks and performing the work of Accountant and there are other Accountants working in the office of respondent no. 2 who are also doing the same account work as other Class III Civilian employees and are getting initial pay of Rs.13500/- per month. The only difference is that applicant nos. 1 and 2 are maintaining accounts as Accounts Clerk in the Mess whereas the other employees are maintaining accounts as Accounts Clerk in the office of respondent no. 2. Similarly, applicant nos. 3 to 6 who are Class IV employees are also performing similar duties, as other peons in the department. It is submitted that Sri Dharam Singh, Mahavir, Chottey Lal, Rameshwar, Ram Avadesh and Mess Waters (Class IV employees) were getting the total pay of Rs.1075/- per month whereas the applicant nos. 3 to 6 were only getting a consolidated amount of Rs.150-200/-.



The pay scale of other civilian Class III and Class IV employees has been revised from time to time. The applicants are agitating for equal pay for equal work for the last seven years and even in the year 1987 and even in the year, 1987 a representation was also sent to the higher authorities by the Union of the Civilian Employees of the Air Force for this purpose but that of no results. It is also submitted that to the utter surprise of the applicant no. 1, he received a letter from the respondent no. 2 issuing show cause notice to the applicant no. 1 stating therein that he made certain objectionable averments in the representation dated 23-10-1991 as such why disciplinary action may not be taken against him. It is submitted that applicant no. 1 had not made any such remarks which necessitated any such action against him. It is, therefore, requested that a direction be given to the respondents to award the same pay scale to the applicants as other Class III and Class IV employees of the same establishment are getting and quashing the show cause notice against the applicants dated 22-2-1992.

3. That a counter affidavit was filed. In the counter affidavit, it is stated that the appointment of the applicant no. 1 clearly states that he was appointed to gain experience only disregarding renumeration basis at Senior Non-Commissioned Officer's Mess. His service can be terminated without giving any notice for breach of discipline and security. It is stated that applicant no. 1 violated the channel of communication by representing his case directly to CAS, IAF and HQ Maintenance Command, IAF. Therefore, the show cause notice was issued to him. It is also stated that service of the



applicant no.2 were temporary and were not amenable to permanancy as per rules and regulations and the terms and conditions of the department pertaining to non-public funds employees. It is stated that no discrimination was done in respect of payment of wages to the applicants. Representation of the applicants was considered by the respondents and was finally rejected vide order no.402 STN/S M/05 dated 22-2-1992. The applicants were appointed as full time clerk and not as over time clerk. It is stated that the appointment of Mess Waiters was casual in nature and the pay and allowances have been revised by the Board of Officers from time to time. Applicant nos.3 to 6 are not Class IV employees. They are only casual employees of the mess and they were doing very little work. They were employed on compassionate grounds only and there was no vacancy or authority to employ them. Therefore, on the basis of the counter affidavit filed by the respondents, the respondents have prayed to dismiss this OA with costs.

4. Rejoinder has also been filed reiterating the facts as stated in the OA.

5. We have heard learned lawyer for the applicant and learned lawyer for the respondents and perused the whole record carefully.

5. Learned counsel for the applicant submits that in the present facts and circumstances of the case, a direction must be issued to the respondents for equal pay equal work. On the other hand, learned lawyer for the respondents has objected these arguments and submitted that this Tribunal should not interfere in policy matters of Government in this regard and equal pay for equal work can be granted only if there is



hostile discrimination but in the present case no hostile discrimination is established. Therefore, he submits that there is no reason to interfere in this matter by this Tribunal.

6. We gave full consideration to the rival contentions of both the parties and perused the whole record.

7. In UOI & Ors Vs. P.V. Hariharan & Anr, 1977

SSC (L&S) 838 the Hon'ble Apex Court held :-

"Quite often the Administrative Tribunal 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 forward their claims on the basis of such change. The Tribunal should realise 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. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. Sometimes orders have been passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales i.e. matters asking for a higher

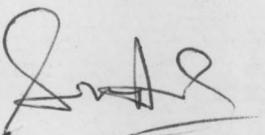
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pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member."

The Hon'ble Apex Court in para 4 of the said judgement further held that classification of posts have nothing to do with fixation of pay scale, it only classifies posts into several grounds based upon the pay scales already fixed. Classification and prescribing pay scales for several posts are two different and distinct functions.

8. In view of the aforesaid recent decisions of the Hon'ble Apex Court, it is found that the applicants in order to succeed in the claim for equal pay for equal work, must establish that there had been hostile discrimination in depriving the pay scale claimed by the applicants. Moreover, determination of the pay scales is a matter of policy of the Government. Thereby, Tribunal is not the appropriate authority in interfering with the pay scales without proper reasons and without being satisfied that there has been a hostile discrimination made out.

9. In the case of Randhir Singh Vs. Union of India & Ors. (1982) 1 SCC 618, the Apex Court held that this was constitutional goal capable of being achieved through constitutional remedies and held that the principle had to be read into Articles 14 and 16 of the Constitution. The same principle was subsequently followed in Dhirendra Chamoli & Anr Vs. State of U.P. , (1986) 1 SCC 637 and Jaipal & Ors Vs. State of Haryana & Ors., (1988) 3 SCC 354. In the case of Federation of All India



Customs and Central Excise Stenographers (Recognised) & Ors. Vs. Union of India & Ors (A988) 3 SCC 91, however, this Court explained the principle of 'equal pay for equal work' by holding that differentiation in pay-scales among government servants holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. In that case different pay-scales fixed for Stenographers (Grade I) working in the Central Secretariat and those attached to the heads of subordinate offices on the basis of recommendation of the Pay Commission was held as not violating Article 14 and as not being contrary to the principle of 'equal pay for equal work'. On the basis of the above judgements it can be said that various factors may work to decide parity in the pay like reliability, responsibility, confidentiality, quality and characteristics of persons, merit, experience, need to avoid stagnation, quality of work qualifications, mod of recruitment, nature of work assigned, seniority etc.

10. In the case of State of U.P. & Ors. Vs. J.P. Chaurasia & Ors. (1989) 1 SCC 121, the Apex Court has pointed out that the principle of equal pay for equal work has no mechanical application in every case of similar work. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out.



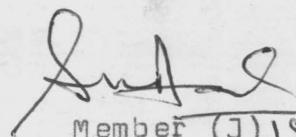
11. In the case of Mrs. Seema Pathak Vs. UOI & Ors, 1995 (3) SLR Page 296 (CAT Chandigarh), it was held that appointment purely on contract basis, fixed monthly

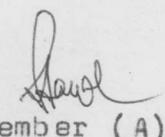
emoluments and terminable by afflux of time not entitled at par with those who were appointed on regular basis and doing the same type of duties.

12. In the instant case, the applicants failed to establish any hostile discrimination against them. The applicants also failed to establish that they are performing the same duties and duration of duties is similar to those Class III and Class IV employees of the same establishment. Equal pay for equal work is dependant upon so many factors as mentioned above. The applicants in this case could not establish a case so as to give direction to the respondents to pay them equal pay as to the other Class III & Class IV employees of the same establishment.

13. Therefore, we are of the considered opinion that the applicants failed to make out a case for 'equal pay for equal work' in their favour and we have no alternative except to dismiss this OA.

14. Therefore, this OA is dismissed with no order as to costs.


Member (J) 18/11/98


Member (A)

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