

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No.
~~XXXXXX~~

9/87

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DATE OF DECISION 20-7-1990Kum.S.K.Verma & Others

Petitioner

Shri P.C.Master

Advocate for the Petitioner(s)

Versus

The Union of India & others

Respondent

Shri J.D. Ajmera

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.R.Chandran; Judicial Member

The Hon'ble Mr. M.M.Singh; Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

1. Kum.S.K.Verma
124, Parshvanagar, Near O.N.G.C.
Guest House, Chandkheda,
Ahmedabad-382424.
 2. Kum.F.V.Patel,
Jasud Mension, Opp.Preyas High School,
Shahpur Mill Compound-380001.
 3. Kum.R.D.Jani,
91, Sarkiwad-ni-pole, Sarangpur,
Ahmedabad-380001.
 4. Kum.S.B.Shah,
1385, Sutariya-ni-khadki, Sheth's pole,
Mandvi-ni-pole, Ahmedabad-380 001.
 5. Shri B.M.Parmar,
Vir Maya Nagar, Girdharnagar,
Shahibaug, Ahmedabad-380 004.
 6. Shri B.R.Shah,
11-B Maitri Nagar Association
Behind Pragatinagar Bus stop,
Naranpura, Ahmedabad-380013.
 7. Shri R.J.Shah,
16, Divya Kiran Society,
Behind Baliakaka Society,
Opp.Krishna Cinema, Naroda,
Ahmedabad-382325.
 8. Kum.D.H.Shah,
7-B Rukshamani Vallabh Society,
Opp.Yogashram, Niyojannagar Road,
Ambawadi, Ahmedabaa-380 015. Petitioners
- (Advocate: Shri P.C.Master)

Versus

1. Union of India
(Process to be served upon the
Secretary Department of Posts,
India, Ministry of Communications,
G.O.I., New Delhi-110 001.
 2. Postmaster General,
Gujarat Circle,
Ahmedabad-380 009.
 3. The Chief Postmaster,
Ahmedabad General Post office,
Ahmedabad-380 001. ... Respondents.
- (Advocate: Shri J.D. Ajmera)

J U D G M E N T

O.A.9 of 1987

Date :

Per : Hon'ble Mr.N.R.Chandran, Judicial Member.

The above application has been filed by eight applicants who had been selected as clerks in the General Post office, Ahmedabad, as a Reserved Training Pool Employees for absorbing them as regular candidates and for the payments of equal salary ^{on par} ~~free~~ payable to regular employees. The applicants state that they joined

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postal department as RTP clerks from 1982 and are discharging the duties which a regular employee discharges.

In the application a reference is made to 1986 Supreme Court 584 and on that basis they pray for equal salary ^{on PAR} paid to a regular employee and also want absorption as regular employees.

The learned counsel for the applicants relies upon the decision in OA 262/86 Binder Ram and Ors. Vs. Union of India being a judgment of the Central Administrative Tribunal Chandigarh Bench, Chandigarh and a decision of the Central Administrative Tribunal Jabalpur Bench in TA 82/86. According to the learned counsel the case of the applicants is identical and therefore they seek similar relief, as given by the C.A.T. Chandigarh and Jabalpur Benches.

On the other hand the learned counsel for the respondents submits that the applicants are not equal to a regular employee and they cannot get absorption. In this context the learned counsel for the respondents drew our attention to the averments in the reply.

The learned counsel for the applicants also submitted that the applicants were offered the alternative employment in the Army postal service which they did not accept. Therefore they submitted that the applicants cannot claim relief in this application.

We have heard the rival contentions. With regard to the averments in the reply statement that the applicants were offered alternative appointment in Army Postal Service, the learned advocate for the applicants clarified that Army Postal Service is different from the regular postal service and therefore the applicants were not obliged to accept the same. Hence the learned counsel for the applicants submits that non-acceptance of the said offer would not disentitle his claim for regularisation if it was otherwise in order. We are of the view that the learned counsel for the applicants is right and the fact that the applicants did not accept the offer in Army postal service which is a different service cannot be put against them.

The learned counsel for the respondents produced us a letter dated 4-4-90 which states that the

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applicants at No.1,2,3,4,5,7 & 8 have already been appointed as regular clerks on the various dates. The details are as follows:

<u>"Name of R.T.P."</u>	<u>Date of Appointment as P.A.</u>
1.Kum.S.K.Verma	3-7-88
2.Kum.S.F.V.Patel	3-7-88
3.Kum.R.D.Jani	30-1-89
4.Kum.S.B.Shah	10-4-89
5.Shri R.J.Shah	12-10-89
6.D.H.Shah	5-12-89
7.Shri B.M.Parmar	2-12-89

With regard to the applicant No.6 no order of appointment has been issued. This Tribunal has ^{Held} ~~allowed~~ in O.A.218/87 that R.T.P. clerks who is governed by a scheme which is dated 18-6-82 would not be entitled to absorption as a matter of right. Hence the applicant No.6 cannot press his claim for absorption, ^{and} the said relief is rejected. With regard to other applicants, who had already been absorbed and appointed as regular clerks the relief for absorption as far as they are concerned has become unfruitful.

With regard to the relief of equal pay on par with the regular employees we are of the view that the matter is governed by the decision in OA 262 of 1986 of Chandigarh Bench and 82/86 of Jabalpur Bench. Central Administrative Tribunal Chandigarh Bench followed the decision of the Jabalpur bench and directed to the respondents to pay same salary as are being received by the regular employees from the date of appointment. In T.A.82/86 of Jabalpur Bench granted the similar relief and directed the payment of the same salary as being received by regular employees with effect from date of appointment. The relevant abstract of the decision of the C.A.T. Jabalpur Bench is as follows:-

"11. As regards the question of equal pay for equal work claimed by the petitioners, we have also to keep in mind article 39 relating to Directive Principles of State Policy in Part IV of the Constitution, while reading Articles 14 and 16 in the present case. This provision together with other provisions of the constitution contain one main

Objective, namely, the building of a welfare state and egalitarian, social order, as pointed out by Hon'ble the Supreme Court in Keshavanand Vs. State of Kerala (1973) 4 SSC 225, If the State itself violates the directive principles, and introduces inequality in the matter of equal pay for equal work it would be most unfortunate, and cannot be justified. It is a peculiar attitude to take on the part of respondents to say that they would pay only hourly wage to RTP employees and not the same wages as other similarly employed Postal Assistants when they are performing the same work, as held by us in paras 6 and 7 of this order. It cannot be justified also in the light of the following observations of Hon'ble the Supreme Court, cited in the case of Surendra Singh Vs. the Engineers in Chief C.P.W.D.A.T.R 1986 SC 76.

"The arguments lies ill in the mouth of Central Government, for it is all too familiar argument with the exploiting class and a welfare state committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or take employment on whatever exploitative terms are offered by the employer. This fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class IV employees cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there should be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work for equal value."

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In the matter of Dearness and other allowances and the need for ^{maintaining} equality between wages of casual workers and salary etc. of regularly appointed Telephone Operators, the order of Supreme Court dated 28.7.1985, in the case of All India Telegraph Engineering Employees Union Vs. Union of India and Another has also been cited by the petitioners besides some other rulings.

12. Under the circumstances, for reasons stated in the preceding paragraph we find the provisions of circular dated 30-10-1980 (Annexure - RI) in so far they relate to payment of hourly rates of wages to employees in the RTP discriminatory and violative of Articles 14 and 16 of the Constitution and are struck down. We direct respondents that the RTP employees performing the same duties as Postal Assistants, shall be paid the same salary and emoluments per mensem as are being received by Postal Assistants, with effect from the date of their appointment. As regards other conditions of service and facilities demanded by the petitioners this is subject to their regular absorption as directed in para 10."

We also find that against the decision of the Jabalpur Bench in T.A./82/86, the matter was taken up to Supreme Court and Supreme Court also dismissed the Special Leave Application in SLP (S) 11313 of 1987 dated 11.5.1988.

This Tribunal has also taken the similar view in T.A./218/87 and the relevant portions are as follows :

"However, the petitioners have been able to make out a cause of hostile discrimination which entitled them to equal treatment in similar circumstances i.e., a claim for "equal pay for equal work", on the basis of the fact that they discharged similar duties performed by regular employee in the same department."

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The learned counsel for the respondents however, contend that the applicants are not discharging a regular function therefore they should not be given equal salary on par with the regular employees. We are of the view that the earlier scheme dated 31-10-1980 and the latter scheme dated 18-6-1982 it is clear that the reserved training pool employees are doing identical duties and they are expected to do the job of a regular employee when he is absent.

The relevant abstract of the scheme dated 18-6-82 will clearly make the stand of counsel for the respondents unsustainable. The relevant portions of the scheme are as follows:-

"i) The strength of the RTP (Reserve Trained Pool) may normally be fixed at 15% of the sanctioned strength of the establishment, excluding the leave reserve posts.

ii) In recruiting units where the extent of absentism is considerably higher than 25% of the sanctioned strength of the establishment (i.e. more than 20% leave reserve and 15% RTP), the strength of the RTP may be correspondingly increased even beyond 15%. The intention is that the number of candidates in the reserve pool should be sufficient to take care of the normal vacancies as well as vacancies on accounts of an increased incidence of absentism. The unit to unit, the strength of the RTP need not necessarily be uniform in all the units and for all times. It follows that the strength of the RTP should be kept under constant review and revised upwards or downwards at the time of each recruitment, keeping in view, the changes in the level of absenteeism.

iv) The candidates in the Reserve Trained Pool will have the liability to work as short duty staff wherever and wherever called upon. Refusal or failure to respond to call for short duty, particularly at the time of strike, agitation, go-slow, etc. will entail the deletion of the candidate's name from the Reserve Trained Pool. While considering absorption of reserve candidates against regular vacancies, the percentage of response to called-for short duty will be taken into account. The candidates who have not responded at all the called for short duty as well as those whose response has been few and far between will cease to be borne on the Reserve Trained Pool and would not therefore, qualify for absorption against regular vacancies."

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In view of this and in view of the decisions referred to above we hold that the applicants are entitled to succeed with reference to the claim for equal pay on par with the regular employees. Therefore we hold that the applicants are entitled to receive wages payable to regular employees and direct the respondents to pay the difference in wage between the wages actually paid and the wages payable to a regular employee. This payment of difference is from the date of their appointment under regular RTP scheme. This difference shall be paid within a period of six months from the date of the receipt of the order. O.A. is allowed as above.

N.R. Chandran

(N.R.Chandran)
Judicial Member.

M. M. Singh

(M.M.Singh)
Administrative Member.