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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 336 of 1989.
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DATE OF DECISION 06.01.1995.

Shri M.B. Patel Petitioner
Shri S.S. Kanaki

Mr. P.H. Pathak Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V. Radhakrishnan Member (A)

The Hon'ble Mr. Dr. R.K. Saxena Member (J)

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

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1. Shri M.B.Patel,
2. Shri S.S.Kanaki,

Junior Account Officer (C)
Office of Area Manager (W)
Sabena Apartment,
Ahmedabad.

...Applicants.

(Advocate : Mr.P.H.Pathak)

Versus

1. Union of India,
notice to be served through
The General Manager,
Telecom, Ahmedabad,
Telecom District,
Ramnivas Building,
Ahmedabad.
2. Assistant Engineer (Staff)
Ahmedabad Telecom District,
Ramnivas Building No.2,
Khanpur,
Ahmedabad.

...Respondents.

(Advocate : Mr.Akil Kureshi)

JUDGMENT

O.A.NO. 336 OF 1989.

Date : 06.01.1995.

Per : Hon'ble Mr.V.Radhakrishnan : Member (A)

Heard Mr.P.H.Pathak and Mr.Akil Kureshi learned advocates for the applicants and the respondents respectively.

2. The applicants are working against the post of Junior Accounts Officer in the scale of Rs.1640-2900, in the Telecom Department for a number of years. Even though they are working against the post of Junior Accounts Officer, they are only getting basic pay in the grade of Office Assistants (Rs.975-1660 + officiating allowances of Rs.50 per month). In order to get promotion of Junior Accounts

Officer the office Assistant has to pass Accounts Examination in two parts. The applicants have passed the first part, as persons who have passed both the parts of the examinations are not available in sufficient numbers, the office Assistants who have passed only in part of the examination like the applicants are entrusted the job of Junior Accounts Officer with special pay of Rs.50/- per month. The contention of the applicants is that they are performing all their duties of that of Junior Accounts Officer, but they are not given same scale of Rs.1640/- 2900/-, but only special pay of Rs.50/- in addition to their basic pay as office Assistants. This discrimination made out to the applicants is alleged to be arbitrary and illegal and violative of Article 14 and 16 of the Constitution of India. The applicants also contended that in all other cases of officiating promotion, the employees are given the scale of pay of the post but in the case of the applicants, they are denied the scale of pay of the post of Junior Accounts Officer and given only special pay of Rs.50/- of officiating allowance. They have contended that the pay should be fixed as per FR 22-C in the higher scale of Junior Accounts Officer. The applicants have made several representations which were rejected and hence they have come to the Tribunal.

3. The applicants have quoted the judgment of the Karnataka High Court - B.Kodandapane Vs. Directors of Text Books, Bangalore and others, wherein it was decided as follows : -

"This court on more than one occasion has held that irrespective of qualifications if duties and functions are performed in the same post, there cannot be a highest pay for the higher qualified holder of the post and a lower pay for the one without that higher qualification. Equal pay for equal work is the guiding principle. If the petitioner does not have the required qualification to hold the post, he should have been reverted to his substantive post long time ago. The respondents cannot take work in the higher post from the petitioner continuing him in the pay scale attached to the lower post. On this short point the petitioner must succeed notwithstanding the objections filed by the respondents".

They have also quoted the following cases without giving full details in some of them, in support of their contention "that equal pay shall be given for equal work".

1. Dhirendra Chamoli and another Vs. State of U.P. - 1986 S.C.C. (L & S) P.187.
2. Bhagwan Dass and others Vs. State of Haryana & Ors. - 1987 A.I.R. - P.2049.
3. Jaipal and others Vs. State of Haryana and others - 1988 (3) S.C.C. - P.354.
4. Employees of Tannery and Footware Corporation of India and ors. Vs. Union of India and ors. - 1991 (1)LLJ.P.563.
5. Krishan Gopal Tiwari Vs. State of Rajasthan etc.- 1994 (1) L.L.J. P.400.
6. Karnataka State Pvt.College Stop-Gap Lecturers Association Vs. State of Karnataka & Ors. - AIR.1991 SC 92 (2) SCC - 29.
7. Gopal Krishna Sharma - 1992 L.I.C. P.2384.

4. They have questioned the policy of the Ministry of Communications, Government of India, letter dated 14.6.1979, wherein it is laid that in case, qualified candidates are not available for promotion to Junior Accounts Officer and if unqualified persons are promoted

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to the higher grade they should be paid only RS.25/- as a special pay. They alleged that this policy is violative of Article 14 and 16 of the Constitution of India. The applicants have stated that they are performing the same nature of duty and shouldering same responsibility as performed by persons regularly promoted as Junior Accounts Officer. There is no difference between the nature of duty and responsibility between the two sets of officials and there is no basis for discrimination in pay scale. The pay scale of office Assistants is Rs.975-1600/- while the pay scale of Junior Accounts Officer is Rs.1640-2900/-. There is no justification for the department to deny them in the higher scale and they are performing the same nature of duties. The department could not pay the applicants less because they have not passed both the parts of the Accounts Examination. There is no separate pay scales for unqualified Junior Accounts Officer and qualified Junior Accounts Officer. Even if the applicants have not passed part-II of the examination they are doing the same work like those who are appointed after passing both the parts and hence there could not be any justification to deprive the applicants for the regular pay scale of Junior Accounts Officer. Accordingly, they claim for the following reliefs :

(A) The Hon'ble Tribunal be pleased to declare the impugned order dated 28.2.1989 as illegal, invalid and inoperative in law and be pleased to quash and set aside it and further direct the respondents to pay the time scale of pay with all allowance of junior Accounts Officer to the applicants for the period when they were officiating on that post.

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(B) Be pleased to declare that the applicants are entitled for the benefits of time scale of pay with all allowances of the post of Junior Account Officer and direct the respondents to pay the arrears of the dues with 18% interest.

(C) Be pleased to declare the act of the respondents depriving the applicant of the wages and allowances of junior Account Officer, for the period when they have worked on that post, as unconstitutional and violative of the principles of equal pay for equal work.

(D) Any other relief to which this Hon'ble Court deems fit and proper in the interest of justice together with cost.

5. The respondents have filed reply. They have stated that unless the applicants pass both the parts of the Accounts Examination they are not entitled for regular pay scales of Junior Accounts Officer, due to availability of vacancies in the Junior Accounts Officer's grade and because of non-availability of candidates who have passed both the parts of the Accounts Examinations officials like the applicants who have passed Part-I only are given officiating promotion as Junior Accounts Officer with special pay of Rs.50/-. This is based on the policy of Government of India, laid down in Ministry of Communication memo no.17-19/79-SEA, dated 21.4.1980, Part-I (Annexure-R/1). These persons who have passed Part-I are allowed to work in local/leave arrangement only.

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Unless they have qualified in part-II of the Account Exam they are not eligible for regular promotion as Junior Accounts Officer, only passing Part-I of the Account Exam does not entitle them to be promoted as regular Junior Accounts Officer. Persons who passed both the parts are given prescribed practical training and then given regular promotion as Junior Accounts Officer. The Junior Accounts Officer is a All India Cadre and the person has to pass both the parts of Accounts Exam to become a member of All India Cadre. They have stated that FR 22 C applies only to promotions on regular basis and does not apply to officiating promotions. The applicants who have passed only Part-I are given officiating promotions on ad hoc basis in local/leave arrangement and they are paid special pay of Rs.50/- per month according to Rules. They cannot claim equality with persons who have passed both the parts of the exam and hence regularly appointed as Junior Accounts Officer. It is also a specific condition that the applicants have been intimated that the promotions are on ad hoc basis with special pay of Rs.50/- and does not entitle them to the higher pay scale. The applicants have accepted this condition and the officiating promotion. They have not expressed unwillingness to what they get as Junior Accounts Officer under these conditions.

6. The applicants have filed rejoinder. They have questioned the departmental instructions and challenged them to be unconstitutional. They have stated that once the applicants have been asked to do work of Junior Accounts Officer they should be given the regular pay scale as per

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the principles of equal pay for equal work and other considerations stated by the respondents are not relevant. They have claimed that the applicants can not be deprived under the FR of equality. They have asked for the instructions issued by the department to be struck down as unconditional and violative of the public policy. They are entitled for fixation of pay as Junior Accounts Officer in the regular scale of Rs.1640-2900. Further they have quoted one case of Shri S.S.Kanaki who was getting Rs.50/- as a special pay when he was appointed as a Junior Accounts Officer after passing part-I of the Account Examination and after he had passed part-II of the Examination he was given the grade of Rs.1640-2900. Shri Kanaki has been performing full duties of Junior Accounts Officer from the time of his officiating promotion and continued to perform the same duties after he was promoted on regular basis after passing the part-II of the examination. Accordingly, the applicants have claimed that they should be given regular pay scale of Rs.1640-2900/-, from the date of their officiating promotion as Junior Accounts Officer. During the arguments Mr.P.H.Pathak learned counsel for the applicants pointed out that the applicants are not asking of higher pay scale but are only asking for the regular pay scale of Junior Accounts Officer in which they are performing their duties. The duties and responsibilities of the persons promoted regularly after passing both the parts of the Account Examination and that of those persons promoted on officiating basis as Junior Accounts Officer after passing only part-I of the examination are the same and there cannot be discrimination between the two sets of employees in the pay scales. He cited the following cases decided by the

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Supreme Court and other High Courts in support of his argument that the applicants are entitled for the pay scale of Junior Accounts Officers.

First case cited by him is that of "K.G. Tiwari Vs. State of Rajasthan decided by the High Court of Rajasthan in S.B.C.W.P. No.3153/1992". In that case it was decided that;

"The helper who was given the work of L.D.C. should be paid their pay scale to L.D.C. for the duration of his working as L.D.C.".

The next case is that of Dhirendra Chamoli and Others Vs. State of U.P. (1986 Supreme Court Cases (L&S) 187) decided by the Supreme Court . In that case it was held that :

"The Casual workers on daily wages basis performing the same duties as performed by regular Class IV Employees are entitled to salary and conditions of service on par with regular workers".

In the case of Surinder Singh and another Vs. Engineer in Chief, CPWD and others (1986 SCC (L&S) 189 (1986) ISCC 639) it was decided that ;

"Daily wage workers of CPWD are entitled wages equal to regular permanent employees employed to do their identical work".

In the case of Bhagwan Das and Others Vs. State of Haryana and Others (1987 III SVIR (L) 57) it was decided that :

" Temporary Supervisors engaged in the Educational Department should be paid the same pay scale as regular supervisors".

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In the case of Daily Rated Casual labour Employed under P&T Dept. Vs. Union of India (JT 1987 (4) SC 164,) it was ordered by Supreme Court that :

"Casual labourer should be paid minimum pay scale of a regular worker."

In the case of Jaipal and Others Vs. State of Haryana and Others (1988) 3 SCC 354) it was decided that:

"If the two categories of employees perform similar nature of work, the facts that employees of one category were appointed temporarily will not make any difference in payment of wages and both should be paid the same pay".

In the case of Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others (JT 1992 (I) it was decided that :

"A teacher appointed temporarily should be paid the same salary as is admissible to regularly appointed teacher.

In the case of Vijay Kumar Vs. State of Punjab, (AIR 1994 SC 265) it was decided that:

" Part time lecturers working for more hours everyday as compared to regularly appointed Lecturers are entitled to be paid according to minimum regular pay scale".

7. Mr. Akil Kureshi, learned advocate for the respondents, on the other hand, pointed out that due to administrative reasons viz., availability of the vacancies and non-availability of the qualified persons, the applicants who have passed Part I only of the Accounts Examination are given chance to officiate as

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Junior Accounts Officer and pay Rs. 50/- as special pay per month as per para 41 of the Manual of Appointment and Allowances of Officers of the Indian P&T Department reproduced below:

"41. (1) Unqualified officials appointed to work as senior or junior Accountants on account of the non-availability of qualified Accountants shall be entitled under Fundamental Rule 9 (25) (a) to a special pay of Rs.20 p.m. in addition to their substantive pay or officiating pay drawn immediately prior to appointment as Senior or Junior Accountant subject to the condition, that the amount of pay plus special pay does not exceed the pay that they would have been entitled to under the normal rules, had they been appointed to officiate as Junior Accountants.

(Govt.of India,Ministry of Finance (C's) endt. No.P.E.9-3/51,dated 4th December,1951 and DGPT's letter No.2-117/66-PAP,dated 16th November,1967 issued with the concurrence of the M of F(C) vide U.O. No.5271-PTI/67,dated 2nd November,1967)".

8. These are by executive instructions due to administrative necessity. The doctrine of equal pay for equal work cannot apply here as the applicants being unqualified form a separate class compared to persons who are qualified. The quality of work done is different between the two sets of persons, the appointment order

issued to the applicant

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judgments. He pointed out that in the case of the State of Mysore and another Vs. P.Narasinga Rao (AIR 1968 SC 349 (V 55 C 79), it was held that the "classification of two grades of tracers, one for matriculate tracers with higher pay scale and another for non-matriculate tracers with lower pay scale was not violative of Article 14 and 16 of the Constitution." The next case quoted by him is Union of India Vs. S.B.Kohli and another (AIR 1973 SC 811). It was held that :

"The necessary qualifications could be prescribed for promotion to supertime grade 2 and it does not violate Arts. 14 & 16 of the Constitution."

In the case of V.Markendeya and others Vs. the State of Andhra Pradesh and others (AIR 1989 SC 1308) it was held that " non-graduate supervisors cannot claim parity with graduate supervisors regarding pay scales and prescribing lower scale for non-graduate supervisors was not violative of Arts.14 & 16 of the Constitution. In the case of State of Rajasthan Vs.Kithen Sen (AIR 1992 SC 1754) it was held that " distinction between two sets of teachers i.e. trained and untrained and prescribing different pay-scales for different educationally qualified candidates is permissible."

9. The question to be decided is whether the respondents are justified in not giving the applicants the pay-scale of JAOs. It is not disputed that the applicants have been promoted on officiating basis to the post of JAO after passing the Part-I of the Accounts Examination. There is no doubt that they are performing their duties

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of JAO and shouldering responsibilities of that post. It is not possible to accept the argument that the quality of their work is different from regularly promoted JAOs. Their performance as JAO is adjudged the same way as the work performed by regularly promoted JAOs. The applicants are posted not only in leave vacancy but also in regular vacancy of JAO due to non-availability of persons who have passed both the parts of the Accounts Examination. It means that some of them may be continuing on working as J.A.O. for considerable length of time. There is no separate scale of pay prescribed for such persons promoted as JAOs who have passed only Part I of the Accounts Examination. When persons like applicants are continuing to work as JAOs for considerable length of time and performed the same duties as performed by regularly promoted JAOs, are the respondents justified in giving them the sum of Rs. 50/- per month as a reward for performing work of a higher nature and shouldering additional responsibilities ? Even though there is no direct case like the applicants case decided by the Supreme Court, Mr. Pathak for the applicants has quoted as cited above number of cases decided by the Supreme Court in the matter of equal pay for equal work. From that it is clear that the Apex Court has consistently upheld the principle of "equal pay for equal work" in the various judgments cited by Mr. Pathak. This principle was once again reiterated by the Supreme Court in the case of Jaipal and others Vs. State of Haryana and Others (1988) SCC 354 where it has observed that ;

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"If the two classes of persons do same work under the same employer with similar responsibility, under similar working conditions, the doctrine of equal pay for equal work^{would apply} and until it would not be open to the State to discriminate one class from the other in paying salary. The State is under constitutional obligation to ensure equal pay is paid for equal work. The same principle was reiterated in the case of V. Markendaya and ors. Vs. State of A.P. (AIR 1989 SC 1308) it was held that ;

" Where two classes of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualifications, they would be entitled to equal pay. If the State denied them equally in pay, its action would be violative of Arts. 14 & 16 of the Constitution and the Court will strike down the discrimination and grant to the aggrieved employees. But before such relief is granted the Court must consider and analyse the rationale behind the State action in prescribing two different scales of pay. If on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility, and educational qualifications required for the relevant posts, the Court finds that the classification made by the State in giving different treatment to the two class of employees is founded on rational basis having nexus with the objects sought to be achieved, the classification must be upheld. Principle of equal pay for equal work is applicable among equals it cannot be applied to unequal."

Keeping in view of the above principles, we have no doubt that the applicants are performing the same work and shoulder the same responsibilities of persons who are appointed as Junior Accounts Officer after passing both the parts of the Accounts Examination. The respondents have not placed any

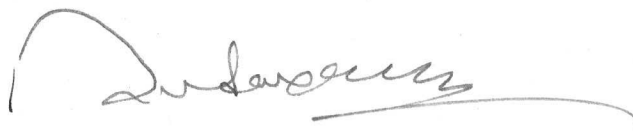
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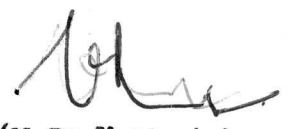
material on record to justify the present applicants to be placed in a separate class in order to pay them a lesser amount of salary. In other words, we cannot see any reasonableness in the classification made between the two groups of employees which is founded on rationale basis having nexus with the objects sought to be achieved, persons like the applicants who have passed the Part-I of the Accounts Examination and are promoted as Junior Accounts Officer in public interest and do the same work as done by the regularly promoted Junior Accounts Officers. It is therefore, clear that the applicants do the same work under the same employer and the similar responsibilities and working conditions there is no reasonable basis for any discrimination. One of the arguments put forward by the respondents is that as per recruitment rules a person has to pass both parts of Accounts Examination in order to get regular promotion entitling him to the pay scale of Junior Accounts Officer. If that is so, the applicants should not have been given officiating promotion of Junior Accounts Officer. However, due to exigency of administration, applicants have been given officiating promotion after passing Part-I of the Accounts Examination. In the circumstances, we are of the view that when they are not to be given regular pay scale of the Junior Accounts Officers as per recruitment rules their pay should be fixed under F.R. 35 suitably on the analogy of Government of India, Department of Personnel and Training O.M.NO. 18/12/85 Est.(Pay 1) dated 18th July, 1986 and O.M.NO. 18/12/26/86/EST (Pay-1) dated 29th July, 1987, (Government of India order No.2 under F.R. 35).

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10. Accordingly, the application is allowed and the impugned order dated 28.2.1989 (Annexure-A/4) is quashed and set aside. The applicants shall be entitled for the special pay as stated above with effect from one year prior to the date of filing this O.A. i.e., 6.7.1988 so long as they continue to hold the post of Junior Accounts Officers. The respondents shall comply this order within eight weeks from the date of receipt ~~of~~ thereof. In view of the above directions the application is disposed of. No order as to costs.


(Dr. R. K. Saxena)
Member (J)


(V. Radhakrishnan)
Member (A)

ait.

Date	Office Report	ORDER
9.5.95		<p data-bbox="654 347 1422 500">At the request of Mr. Adeshra for Mr. Akil Kureshi, the matter is adjourned to 10.5.1995.</p> <p data-bbox="894 635 1233 699">(V. Radhakrishnan) Member (A)</p> <p data-bbox="606 758 663 790">npm</p>
10.5.95		<p data-bbox="617 877 794 914"><u>MA/329/95</u></p> <p data-bbox="597 946 1527 1448">Even though time limit of eight weeks given by this Tribunal was over by 6.3.1995, respondents have filed M.A. for extension of time only on 24.4.1995 asking for extension up to 6.5.1995, that period has also expired by now. Hence M.A./329/95 becomes infructuous. Respondents are directed to implement the judgment immediately. MA/329/95 stands disposed of accordingly.</p> <p data-bbox="930 1572 1307 1660">(V. Radhakrishnan) Member (A)</p> <p data-bbox="560 1685 617 1717">npm</p>

Date	Office Report	ORDER
22.6.95.		<p data-bbox="588 280 1560 742">Even though direction was issued by this Tribunal on 10.5.1995, directing the respondents to implement the judgment immediately, the present M.A. has been filed for extension of time upto 15th September, 1995. This action of the respondents is not appreciated. One last opportunity is given to the respondents to implement the judgment immediately without fail. M.A./411/95 stands rejected and stands disposed of. Copy of this order be given to the counsel for the respondents.</p> <div data-bbox="1074 767 1403 962"> (V. Radhakrishnan) Member(A)</div> <p data-bbox="588 1023 666 1059">ait.</p>