

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 389 /1988

Date of decision : February 28, 1989.

Dr. Prabodh Chandra Samal
S/o Sri Birabhadra Samal
Medical Officer,
Dandakaranya Development Authority,
M.V.79 Hospital,
P.O Lachipeta, Dist. Koraput. ... Applicant

Versus

1. Union of India, represented through its Secretary, Government of India, Ministry of Home Affairs, Department of Internal Security, Rehabilitation Division, Jaisalmer House, Mansingh Road, New Delhi-110 001.
2. Chief Administrator, Dandakaranya Development Authority, At/P.O/District -Koraput.
3. Chief Medical Officer, Dandakaranya Project, At/P.O Malkangiri, District-Koraput. .. respondents

M/s. P.Palit, B.Mohanty, A.K Patnaik, S.K Mohanty, S.K Sangneria .. For Applicant

Mr A.B Misra, Senior Standing Counsel(Central) .. For Respondents

C O R A M

THE HON'BLE MR. B.R PATEL, VICE-CHAIRMAN
AND
THE HON'BLE MR K.P ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted to see the judgment ? Yes.
2. To be referred to the Reporters or not? No
3. Whether Their Lordships wishes to see the fair copy of the judgment? Yes.

JUDGMENT

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B.R PATEL, VICE CHAIRMAN In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs, (i) direction to be issued to Respondents No.1 and 2 to equalise the pay of the applicant with effect from 3.12.1975 and (ii) to pay the applicant in the scale of pay of Rs.700-1300 with effect from 3.12.75 and to pay him the scale of pay of Rs.2200-4000 with effect from 1.1.1986.

2. The facts of this case, in brief, are that the applicant was appointed as a Medical Officer under the Dandakaranya Development Authority ('DDA') on ad hoc basis on 21.11.1975 on a scale of Rs.650-1200. He joined the service on 3.12.1975. He was allowed to cross the Efficiency Bar with effect from 1.12.81. He was regularised in service with effect from 3.12.1975 i.e., the date when he joined the service vide Annexure A-3. The respondents in their counter-affidavit have maintained that the applicant was given the scale of Rs.650-1200 on the basis of recommendation of the Third Pay Commission and since he was in Class II service, he can not be given the pay scale of Junior Class I posts of Central Health Service ('CHS'). They have further averred that the Non-CHS Medical Officers held posts carrying the pay scale of Rs.650-1200/- (Group B post) and that posts of CHS Medical Officers carrying the pay scale of Rs.700-1300 (group A post).

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are governed by two different sets of Recruitment Rules and as such the applicant has no claim to get the pay scale of Rs.700-1300. They have also raised the question of maintainability and have contended that the applicant is not entitled to the scale of Rs.700-1300 with effect from the date of his joining the service.

3. We have heard Mr.P.Palit, learned counsel for the applicant and Mr.A.B Misra, learned Senior Standing Counsel for the Central Government and gone through the relevant papers. Mr.Palit has urged that since the applicant was doing the same work which the Junior Class I officers of the C.H.S do, he should get the pay of Junior Class I of the C.H.S on the principle that equal pay should be given for equal work which has been enunciated by the Hon'ble Supreme Court. He also referred to the letter No.13/4/75-AIV dated 29.8.78 from the Senior Executive Officer(Administration DDA to the Under Secretary to Government of India, Ministry of Supply and Rehabilitation(Department of Rehabilitation), extracts of which has been furnished in the body of the application. In this connection he has drawn our attention to paragraphs-6 and 7 of the application, particularly to the following portion:-

" In all fairness, it may be stated that there is no difference in the duties and responsibilities attached to both the posts of Medical Officers in the C.H.S and Non C.H.S cadres. Originally, the scale of pay between C.H.S and non C.H.S doctors, scale of Project Doctors was equalised

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with those of their counter-parts in the C.H.S. Hence it will not do any justice if the situation of the disparity in scales for posts of C.H.S and non C.H.S is not removed.

In the fitness of things, it is urged that the case of Project Medical Officers for placing them in the Junior Class-I scale of Rs.700-1300/- with effect from 1.1.1973. xx xxx ".

Mr Palit has also drawn our attention to the counter where the respondents have admitted that the "duties and responsibilities of Medical Officers of the C.H.S and the Dandakaranya Project are same". As from the very beginning the applicant was doing the same type of work as the Junior Class I officers of the C.H.S and the DDA is an Organisation set up by the Government of India, Mr Palit has pleaded that the applicant should be treated on par with the Medical Officers of Junior Class I of the C.H.S in the matter of scale of pay.

4. Mr Misra, on the other hand, has contended that though the duties and responsibilities of Medical Officers of Junior Class I of the C.H.S and those of the Medical Officers of the D.D.A are same, " the area of posting and working conditions of the C.H.S. officers, who are expected to work in any difficult area of the country are different from the Project Medical Officers who are supposed to be posted only to the districts of Koraput in Orissa and Bastar in Madhya Pradesh ". Thus the posts under C.H.S and those in the Dandakaranya Project , according to Mr. Misra were not exactly similar and comparable. The districts of Koraput and Bastar are Scheduled districts predominantly

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peopled by tribals. These districts are amongst the most undeveloped regions of the country as has been pointed out by Mr. Palit. We, therefore, do not accept the contention of Mr. Misra that the members of the C.H.S work in more difficult area than the Medical Officers of the D.D.A. The other point urged by Mr. Misra was that the applicant belongs to Group B or Class II Civil Service which carries the pay scale of Rs.650-1200/- and this was the recommendation of the Third Pay Commission for this group of officers and as such the applicant can not be given the higher scale of Rs.700-1300/-. The hierachial order and the organisation set up of the medical establishment of the DDA has not been placed before us and we find it difficult to appreciate that the applicant was really placed in Class II cadre of the service from which promotion lies to Junior Class I. The moot point however is whether the applicant was discharging the same functions as the members of the C.H.S. As we have seen above, the respondents themselves have admitted in their counter that the duties and responsibilites of the applicant were the same as those of the Medical Officers of Junior Class I of the C.H.S. This being the position the question that remains to be decided is whether he should get the same scale of pay as has been given to Junior Class I officers of the C.H.S. The law is well-settled that there should be equal pay for equal work and this doctrine is no longer a mere abstraction. In this connection we can do no better than to quote the

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judgment of the Hon'ble Supreme Court in the case of Surinder Singh and another v. The Engineer in Chief, C.P.W.D and others reported in A.I.R 1986 S.C. 584:

" One would have thought that the judgment in the Nehru Yuval Kendra's case (supra) concluded further argument on the question. However, Shri V.C Mahajan, learned counsel for the Central Government reiterated the same argument and also contended that the doctrine of 'equal pay for equal work' was a mere abstract doctrine and that it was not capable of being enforced in a court of law. He referred us to the observations of this court in Kishori Mohanlal Bakshi v. Union of India, AIR 1962 SC 1139. We are not a little surprised that such an argument should be advanced on behalf of the Central Government 36 years after the passing of the Constitution and 11 years after the Forty-Second Amendment proclaiming India as a socialist republic. The Central Government like all organs of the State is committed to the Directive Principles of State Policy and Art. 39 enshrines the principle of equal pay for equal work. In Randhir Singh v. Union of India, (1982) 3 SCR 298: (AIR 1982 SC 879), this court had occasion to explain the observations in Kishori Mohan Lal Bakshi v. Union of India (supra) and to point out how the principle of equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine accepted throughout the world, particularly by all socialist countries. For the benefit of those that do not seem to be aware of it, we may point out that the decision in Randhir Singh's case has been followed in any number of cases by this court and has been affirmed by a Constitution Bench of this court in D.S Nakara v. Union of India, (1983) 2 SCR 165: (AIR 1983 SC 130). The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill-come from the mouths of the State and State Undertakings. "

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we have also gone through the judgment of the Supreme Court in Randhir Singh v. Union of India and others reported in AIR 1982 SC 879. In paragraph 6 of the judgment, Their Lordships have observed as follows:-

" We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. "

And again in paragraph 8 as :

" It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Art.39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Art.14 of the Constitution enjoins the State not to deny any person equality before the law and the equal protection of the laws and Art.16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. "

Then again :

" The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word "Socialist" must mean something. Even if it does not mean 'To each according to his need', it must at least mean 'equal pay for equal work'.

Amritpal Singh

Towards the end of this paragraph Their Lordships have observed as follows:-

" Construing Articles 14 and 16 in the light of the Preamble and Art.39(d), we are of the view that the principle 'Equal pay for Equal work' is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. "

We have, therefore, no doubt whatsoever that the doctrine of equal pay for equal work should most appropriately apply to the present case. The applicant also admittedly has the same qualification as the Medical Officers of Junior Class I of the C.H.S.

5. Mr. Misra has also raised the question of the applicant's induction to the C.H.S from the date of his initial appointment and has contended that since the applicant had not been taken in as a member of the C.H.S cadre at the time of his initial appointment, the question of appointment of the applicant in the C.H.S retrospectively would affect the service prospects of the several personnel in the C.H.S and as such would not be appropriate, legal and justified. The applicant has not made any plea, as we have noticed in paragraph 9 of his application which deals with the reliefs sought, for his induction into C.H.S and as such it is not necessary for us to go into this aspect. Paragraph-3 of the counter refers to the case in O.A No.349/88 where he has prayed for induction into C.H.S and the matter would be dealt with while considering

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the application in that case. In this case we have confined ourselves only to the question of pay scale, since admittedly the work and responsibility of the applicant as Medical Officer of the D.D.A are the same as those of the members of the Junior Class I of the C.H.S. The applicant is entitled to the scale of pay of Rs.700-1300 on the principle that 'equal pay for equal work' should be given as has been ordained by the Hon'ble Supreme Court in its judgments, referred to above.

6. We, therefore, direct that the applicant should be given the pay in the scale of Rs.700-1300 with effect from the date on which he joined as Medical Officer on ad hoc basis. His pay should also be fixed in the corresponding pay scale as recommended by the Fourth Pay Commission with effect from 1.1.86. His dues should be calculated on this basis and the arrears should be paid to him within 3 months from the date of receipt of a copy of this judgment. The application is accordingly allowed, leaving the parties to bear their own costs.

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Vice-Chairman

J. agree.
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28-2-89
Member (Judicial)

K.P ACHARYA, MEMBER (JUDICIAL)



Central Administrative Tribunal
Cuttack Bench, Cuttack
28th February, 1988 / N.J. Joseph, SPA.