

2

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, : CUTTACK.

ORIGINAL APPLICATION NO: 399 OF 1989.

Date of decision : 3rd December, 1990.

Jayant Kumar Das and others : Applicant
Versus
Union of India and others : Respondents.

For the applicants : M/s S.K.Pattnaik,
P.Pradhan, Advocates.

For the Respondents : Mr. Ganeswar Rath, Sr
Standing Counsel (Central)

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the reporters or not ? *ye*,
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

%%%%

JUDGMENT

N. SENGUPTA, MEMBER (J),

The applicants are Assistant Directors

of All India Radio, posted at Cuttack, Sambalpur and Keonjhar. The reliefs that they have asked for are quashing of the Notification No. F15(T)/IC/86, dated 13.3.1987, for ordering a revision of the Pay Scales of the applicants to Rs. 3000-4500/- and payment of arrears of Salaries calculated in that scale of Pay.

2. The facts stated by the applicants, put in brief, would run thus. They were appointed Assistant Station Directors (A.S.D.) in the scale of Pay of Rs.900-1400/- . Applicant No.1 joined in September, 1982, Applicants No.2 and 3 in 1986. In the All India Radio Organisation besides the posts of Deputy Director General, Station Director, Station Director (Ordinary Grade) , there are three others grades of posts namely A.S.D., Programme Executive (Selection Grade) and Programme Executive, the last mentioned being a Group 'B' Post. The scales of pay of Programme Executive (SG) and Programme Executive were respectively Rs. 700-1300/- . Under the Recruitment Rules, a Programme Executive (PEX) with five years service is entitled to promotion as A.S.D. The Recruitment Rules is at Annexure-1 to the application. When the recommendations of the 3rd Central Pay Commission were

implemented, the entry scale of Group 'A' was Rs. 700-1300/- and the scale of A.S.D. was Rs. 900-1400/-. At the time of ^{Submission Report} ~~Constitution~~ of the IVth Central Pay Commission clubbed the posts carrying scale of pay of Rs. 900-1400/- with those carrying scale of pay of Rs. 700-1300/- and they recommended a uniform scale of Rs. 2200-4000/- for all such persons (vide paras 8.57 and 8.58) of the Report of the IVth Central Pay Commission. The IVth Central Pay Commission based its recommendations on the assumption that majority of the posts in the scale of Rs. 900-1400/- were not of the Ministry of Information and Broadcasting and those were proposed to be given the scale of Rs. 700-1300/- on formation of Indian Broadcasting Programme Service.

Since no such Indian Broadcasting Programme Service has been constituted nor any such scale prescribed, the ^{Wrong} 2nd Respondents went on accepting the recommendations of the IVth Central Pay Commission prescribing a scale of Rs. 2200-4000/- for the applicants.

3. After the filing of the counter by the Respondents, the applicants have filed a rejoinder which we have taken as an amendment to the Original Application in which they have stated that when the Dental Surgeons who were drawing Pay in the Scale of Rs. 900-1400/- in the scale prescribed after the 3rd Pay Commission report were given the scale of Rs. 3000-4500/- there is no justification for the applicants

Mer. Eef

being denied the same scale of pay i.e. Rs.3000-4500/-.

4. The Respondents in their counter affidavit have averred that the nature of duties performed by the Dental Surgeons is not the same as performed by the A.S.D. of All India Radio. They have denied the existence of any post of Programme Executive (S.G.) after the recommendations of the IVth Central Pay Commission and have averred that a programme Executive with five years regular service would be eligible for promotion to the Grade of Assistant Station Director and they have also questioned the propriety of making a comparison of posts existing in other Departments of the Government with those of the Information and Broadcasting Service. In fine, the case of the Respondents is that the applicants have tried to make some comparisons with the posts carrying dissimilar duties and responsibilities in other Departments of the Government and as such are not entitled to any relief.

5. We have heard Mr. S.K.Patnaik, the learned Counsel for the applicants and Mr. Ganeshwar Rath the learned Standing Counsel for the Respondents. Mr. Patnaik has very vehemently urged that as the pre-revised scales of pay of Rs. 700-1300/- were tagged up with the higher scale of Rs. 900-1400/- and a common revised scale of pay of Rs. 2200-4000/- was prescribed,

Mer 2/1/90

grave injustice has been done to the applicants by violation of Articles 14 and 16. Mr. Patnaik has further urged that when the scale of Dental Surgeons who were drawing pay in the pre-revised scale of Rs. 900-1400/- were allowed the scale of Rs. 3000-4500/-, the applicants should also have been allowed to draw the pay in that scale. In this regard, Mr. Rath, the learned Counsel for the Respondents has drawn our attention to the judgment of the Principal Bench in Original Application No. 26 of 1989 decided on 16.1.1988. The facts of that case were similar, if not identical with the facts of the present case. The applicants therein was also an Assistant Director of Delhi Door Darshan Kendra. The Applicant of that case also claimed the scale allowable to Dental Surgeons. The Principal Bench rejected the contention of the applicant before ~~the~~ it making the following observations:

Mr. Rath
" We find that there is a reasonable basis of classification and there is no nexus between the levels of minimum qualifications, course content etc. prescribed, for Dental Surgeons and that for Assistant Station Directors of All India Radio and Door Darshan. XXXX XXXX XXXX XXXX . In the present case, the basis of classification is well established. As indicated earlier, the minimum qualification course content and period of training and duties are different between the applicants and Dental Surgeons. Hence different Pay Scales could be granted without being afflicted by the vice of discrimination".

agree with those observations of the Principal Bench. In this connection it would also be pertinent to refer to the decision of the Honourable Supreme Court in the case of State of U.P. Vs. J.P. Chaurasia reported in AIR 1989 SC 19 and that in the case of U.C. Gupta Vs. Oil and Natural Gas Commission and others reported in AIR 1989 SC 29. On reading these two cases it would be apparent that what scales should be prescribed for a particular service and how the services are to be equated is a matter which should ordinarily be left to the expert bodies like Pay Commission and interference by Court in such matters should be avoided. Of course where it is proved that persons manning different posts perform manifestly almost the same nature of duties and carry same responsibilities, the Courts may intervene on the tests of the doctrine of equal pay for equal work but the present one does not fall in that special category.

6. Mr. Patnaik for the applicant has next drawn our attention to another judgment of Principal Bench of this Tribunal in the case of O.A. 300 of 1986 delivered on 30.3.1988. There the applicant Smt. Chitra Narayana joined service in All India Radio as a producer later promoted as Deputy Chief Producer and again Chief

*Mem. Sept 14
1980.*

Producer, the three posts carried progressively higher scales of pay. In 1982 a policy decision was taken to constitute a unified service that, according to the applicant, resulted in some anomalies. The relief that the applicants before the principal Bench sought was to declare the amended Rules as ultra vires. Mr. Patnaik has invited our attention to pages 34 to 37 of the copy of the judgment. At page 34 the duties and responsibilities of different posts in the organisation were stated. This Tribunal took into account the fact that some of the posts which were feeder grade post were clubbed to the scale of pay prescribed for the promotional posts and in that context they observed that the applicant would certainly be kept up but not kept down and that while an unintended benefit in the form of so called promotion could be legitimately conferred on the Chief Producers in the process of equating of posts, rights already conferred could not be adversely affected on the specious plea that their equation with Station Director (SG) amounted to premature promotion. The distinguishing feature is that in OA 300 of 1986 the applicant had passed through three different stages before determining the pay of Chief producer and by amalgamation the applicant was actually made to get a scale of pay prescribed for a post from which she was promoted. Therefore, in our opinion these observations do not have any application to the facts of the present case. At the cost of the repetition, it may be stated that before the

*Mer. Supt
3/11*

introduction of the pay scale of Rs. 2200-4000/- for the Assistant Directors, the post of Programme Executive (SG) had been abolished. Therefore, there can be no question in the present circumstances, of prescribing the same scale of pay for the feeder post and the promotional posts. However, by these observations we do not mean to fetter the discretion of the authorities to consider and dispose of the representations made by the applicant No.1 on second August, 1986 and 29th April, 1988 (Annexures 7 and 8) to the application. ~~With~~ ^{on} these observations we would dispose of the application by saying that in view of the decision of the Principal Bench of this Tribunal in OA No.26 of 1989 vide Annexure R/3 and the second Supreme Court cases referred above, it is not possible to grant the relief that the applicant has sought for. In the peculiar circumstances of the case, we do not pass any order as to costs.

Bimal
..... 3/12/90
VICE-CHAIRMAN



Her Esq
..... 3/12/90
MEMBER (JUDICIAL)

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.