

5

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 361 OF 1999
Cuttack, this the 27th day of October, 2000

Manoj Kumar Patnaik and others Applicants

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som,
(SOMNATH SOM)
VICE-CHAIRMAN
27/10/2000

6

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 361 OF 1999
Cuttack, this the 27th day of October, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

1. Manoj Kumar Patnaik, a ged about 34 years, son of Madhusudan Patnaik, at present working as Binder Grade I and General Secretary, Postal Printing Press Employees Union.
2. Gulzar Ali Khan, aged about 40 years, son of Athar Ali Khan, working as Bindery Assistant.
3. Subash Chandra Maharana, aged about 38 years, son of Saila Maharana, working as Bindery Assistant

All above are working in their respective post in the O/O the Manager, Postal Printing Press, Mancheswar INdustrial Estate, Bhubaneswar-10, District-Khurda

..... Applicants

Advocates for applicants - M/s K.C.Kanungo
S.Behera

Vrs.

1. Union of India, represented through Director General, Department of Post, Dak Bhawan, Sansad Marg, New Delhi-1.
2. Chief Post Master General,Orissa Circle, Bhubaneswar, District-Khurda.
3. Manager, Postal Printing Press, Mancheswar Industrial Estate, Bhubaneswar-10, District-Khurda.

..... Respondents

Advocate for Respondents -

Mr.U.B.Mohapatr
a
ACGSC

S Som
SOMNATH SOM, VICE-CHAIRMAN

ORDER

In this O.A. the three petitioners, first of whom is Binder Grade-I and General Secretary of Postal Printing Press Employees' Union, and the other two are Bindery Assistants have prayed for allowing the Bindery assistants the pay scale of Rs.1320-2040/- corresponding to

Fifth Pay Commission revised pay scale of Rs.4000-6000/- from 1.1.1996. The second prayer is for a declaration that the action of the departmental authorities allowing Bindery Assistants the scale of pay of Rs.3040-4590/- is illegal. The respondents have filed counter opposing the prayers of the applicants, and the applicants have filed rejoinder. For the purpose of considering this petition it is not necessary to record all the averments made by the parties in their pleadings. These will be referred to while considering the submissions made by the learned counsel of both sides. We have heard Shri K.C.Kanungo, the learned counsel for the applicants and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents and have also perused the records. The learned counsel for the petitioners has filed written note of arguments along with citations and these have also been perused.

2. The admitted position is that originally in Binding Section of the Postal Printing Press there were three grades, Bindery Assistant in the scale of Rs.800-1150/-, Binder Grade-II in the pay scale of Rs.950-1400/-, and Binder Grade-I in the pay scale of Rs.1150-1500/-. The post of Bindery Assistant was filled up 50% by promotion from the feeder grade of Labourers, failing which by deputation and 50% by direct recruitment failing which by promotion. The post of Binder Grade-II was filled up 75% by promotion failing which by deputation and 25% by direct recruitment failing which by promotion. Post of Binder Grade-I was filled up 100% by promotion from Binder Grade-II failing which by deputation. In order dated 8.2.1993 at Annexure-2 the pay scales of Binder Grade-II at

S. Jam

Rs.950-1400/- and Bindery Assistant at Rs.800-1150/- were merged to higher scale of Rs.950-1500/- and designation was changed to Bindery Assistant. At that time in the Postal Printing Press there were thirty posts of Binder Grade-II and 36 posts of Bindery Assistant. Binders Grade-II opted for the new scale the end of which was slightly higher than their earlier scale and also for the new designation of Bindery Assistant. It is submitted by the learned counsel for the petitioners that this new scale of pay was given in consideration of the recommendation of the Inter-Departmental Committee of 1987 and 1995. Earlier Bindery Assistants were treated as semi-skilled and Binder Grade-II were treated as skilled. But in the order dated 8.2.1993 both were treated as skilled and designated as Bindery Assistant and given the scale of Rs. 950-1500/-. The Fifth Pay Commission recommended separate pay scale for Binder Grade-II at Rs.4000-6000/- and for Bindery assistant at Rs.3040-4590/-. The departmental authorities have given the Bindery Assistants the scale of Rs.3040-4590/-. In the present petition the Bindery Assistants want the scale recommended by the Fifth Pay Commission for Binder Grade-II. In support of his submission the learned counsel for the petitioners has relied on the following decisions:

(i) S.L.Sachdev v. Union of India, AIR 1981 SC 411;

(ii) Union of India v. S.S.Viswanath, AIR 1988 SC 2255;

(iii) State of Orissa v. Sukanti Mohapatra, AIR 1993 SC 1650; and

(iv) State of West Bengal v. Deb Kumar Mukherjee, AIR 1995 SC 1889.

3. The respondents have opposed the prayer of the applicants on the ground that in the Postal Printing Press at Bhubaneswar, post of Binder Grade-II does not exist after the circular dated 8.2.1993 and all the erstwhile Binders Grade-II have voluntarily opted and accepted the designation of Bindery Assistant and got the slightly higher scale of Rs.950-1500/- instead of their earlier scale of Rs.950-1400/-. So far as the original Bindery Assistants are concerned, in the process they have got a scale of pay which is even slightly higher than the earlier scale of Binder Grade-II. The respondents have stated that as the post of Binder Grade-II does not exist in the Postal Printing Press at Bhubaneswar, the question of giving the scale of Rs.4000-6000/-, as recommended by the Fifth Pay Commission for Binder Grade-II, to the Bindery Assistants does not arise. Secondly, it is urged that the erstwhile Binders Grade-II having come over voluntarily to the slightly higher scale with the new designation, they cannot claim the replacement scale of Binder Grade-II.

4. The first point urged by the learned counsel for the petitioners is that even though by virtue of the circular dated 8.2.1993 the erstwhile Binders Grade-II have been redesignated as Bindery Assistants, the Recruitment Rules have not been changed and therefore, it is submitted that posts of Binder Grade-II are in existence *de jure* and the replacement scale of Rs.4000-6000/- should be given to the Bindery Assistants. It is submitted by the learned counsel for the petitioners that the statutory rules relating to recruitment and promotion cannot be changed by an executive order dated 8.2.1993. In support of

VJAM

his contention the learned counsel for the petitioners has relied on the decision in S.S.Viswanath's case(supra), in which the Hon'ble Supreme Court have held that norms regarding recruitment and promotion of officers belonging to civil service can be laid down either by a law by the appropriate legislature and the rules made under Article 309 or by way of executive instruction issued under Article 73. It is submitted by the learned counsel for the petitioners that as in this case the Recruitment Rules providing for recruitment of Bindery Assistants and Binder Grade-II are still in force it must be held that posts of Binder Grade-II are in existence in law in the Postal Printing Press. We are not inclined to accept this proposition because the erstwhile Binders Grade-II have voluntarily accepted the designation of Bindery Assistant and come over to the higher scale. Moreover, in the present petition the prayer is not for giving higher scale of Rs.4000-6000/- to Binders Grade-II meaning such of the Bindery Assistants who were erstwhile Binders Grade-II. The prayer in this petition is for giving the replacement scale of Binder Grade-II to all the Bindery Assistants. It is also to be noted that after the erstwhile Binders Grade-II and Bindery Assistants have been redesignated as Bindery Assistants, the post of Binder Grade-II has ceased to exist. In view of this, it cannot be held that the posts of Binder Grade-II are still in existence in the Postal Printing Press. This contention is therefore held to be without any merit and is rejected. The second decision in this connection relied upon by the petitioner is S.L.Sachdev's case (supra). This decision deals with differential treatment in the matter of promotion between

two groups of UDC who belong to one cadre. This decision has no application to the facts of this case.

5. The second aspect of this matter is that even though recruitment rules for the post of Binder Grade-II have not been changed, in fact there are no Binders Grade-II in the Postal Printing Press because they have voluntarily accepted the designation of Bindery Assistants and have come over to the new scale. The Pay Commission has not recommended the higher scale of Rs.4000-6000/- for Bindery Assistants. Therefore, the replacement scale for Binder Grade-II by itself cannot be made applicable to Bindery Assistants.

6. The second limb of argument of the learned counsel for the petitioners is that the Bindery Assistants are doing the same job as Binders Grade-II and therefore on the principle of equal pay for equal work and in the light of the decision of the Hon'ble Supreme Court in **Deb Kumar Mukherjee's case (supra)** the Bindery Assistants must be allowed the pay scale for Binder Grade-II. In support of his contention, the petitioners at Annexure-3 have given the duty-chart of Bindery Assistants and it has been strongly urged that they are doing the same job which the erstwhile Binders Grade-II were doing. This contention is also without any merit because the question of equal pay for equal work will have to be considered when two groups of employees with same recruitment qualifications and experience are doing the same type of work and are being unjustly discriminated against in the matter of pay scale. In the instant case, we have already held that in the Postal Printing Press at Bhubaneswar, posts of Binders Grade-II are not there after introduction

Jdm

of the change over in order dated 8.2.1993 and therefore the applicants cannot claim that they are doing the same work as Binders Grade-II which post does not exist in fact. Under the law also the post of Binder Grade-II is not available because all the Binders Grade-II have voluntarily accepted the designation of Bindery Assistants and got the higher scale of Rs.950-1500/-. The principle of equal pay for equal work is therefore wholly inapplicable in the present case. The last decision cited by the learned counsel for the petitioners is Sukanti Mohapatra's case (supra). This decision deals with regularisation of irregular appointees and the power of the Government to relax any of the requirements of the rules. The facts of that case are also widely different and that decision has no application to the facts of this case.

7. One more point is to be noted in respect of the submission of the learned counsel for the petitioners that Binder Grade-II posts are still in existence in law. Had it been the case, then the Bindery Assistants had to be promoted to Binder Grade-II and thereafter to the post of Binder Grade-I. But the respondents have pointed out and this has not been denied by the applicants that after 8.2.1993 the newly designated Bindery Assistants are being promoted directly to the post of Binder Grade-I which is filled up 100% by promotion. This also shows that Binder Grade-II posts are not in existence in law and in fact.

8. In the result, therefore, we hold that the Application is without any merit and the same is rejected. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Oct. 27, 2000/AN-PS

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27.10.2000