

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

January

Dated Wednesday the 31st day/of 1990

Present:

Hon'ble Shri S.P. Mukerji, Vice Chairman
and

Hon'ble Shri N. Dharmadan, Member (Judicial).

ORIGINAL APPLICATION : 474/89

1. A.O. Devassykutty)
2. P.K. Abdulla)
3. M.C. Rappai)
4. M. Chami)
5. M. Murugan)
6. K. Ramakrishnan)
7. I.K. Devassy)
8. V. Balakrishnan)
9. A.V. Paulose)
10. P.S. Krishnan)
11. P. Sukumaran)
12. M.K. Ramaswamy and)
13. M. Narayanan Kutty)THE APPLICANTS

Versus

1. The Employees State Insurance Corporation, E.S.I. Corporation, Buildings, Kolta Road, New Delhi represented by its Director General.
- &
2. The Regional Director, E.S.I. Corporation, Trichur.

)..the respondents

M/s. K.P. Dandapani & Jaju Babu, Advocates appeared for the applicants

Mr. C.S. Rajan, Advocate appeared for the respondents

JUDGMENT

Shri N. Dharmadan, Member (Judicial).

The short question that arises for consideration in this case is whether the applicants, who are working as Daftries in the Employees State Insurance Corporation (ESIC) ^{QZL} entitled to the scale of pay of Rs.800-1150 treating them as Record sorters simply because all of them are now doing the same type of work, applying the principle of equal pay for equal work.

2. Thirteen applicants, who joined as Daftries in the Corporation were getting a scale of pay of Rs.200-250, which was equal to the scale of pay of Record sorters. But consequent on upgradation of the scale as per Exhibit P-1 dated 11.5.1983, the pay of Record sorters in the local offices was stepped up and fixed as Rs.210-270. The record sorters working in the local offices would also get a special pay. According to the applicants persons working in the local offices were designated as Record sorters and those who are working in the Regional offices are termed as Daftries.

3. The Jamedar/Daftry/Record sorter were eligible for promotion the cadre of Selection Grade Daftry. All these posts are in the Group D cadre. With effect from 1.1.1986 the scale of pay was also revised. Accordingly the pay scale of Daftry is Rs.775-12-995-EB-14-1025 and the pay scale of Selection Grade Daftry is Rs.800-15-1010-EB-20-1150.

4. There were 22 posts of Daftries in the Regional Office at Trichur. The Corporation issued an order creating six posts out of the 22 posts as Record sorters in the scale of Rs.800-1150. The rest of sixteen persons are continuing in the scale of Rs.775-1025 as Daftries. Exhibit P.2 is the order. Later three more posts of Daftries were re designated as Record sorters with higher pay. Thus the thirteen applicants alone are now deprived of higher pay even though they are doing the same job of Record sorters. There is no difference in the duties and functions of those thirteen applicants when compared with the nine others working in same Regional Office. This according to the applicants are violative of the doctrine of equal

pay for equal work and hence the action of the Corporation is discriminatory and violative of Article 14 and 16 of the Constitution of India. Exhibit P-3 and similar representations filed by the applicants were rejected. Hence, they have approached the Tribunal^{by} for reliefs.

5. In the counter affidavit filed by the Corporation they have stated that the scales of pay of Daftries and Record sorters were different and that distinction is being maintained all along. The creation of selection grade was made in order to avoid stagnation in the category of Daftries and also to protect the right of seniors in the service. They also stated that the applicants would also get the benefit of higher scale of pay in accordance with their seniority if they are prepared to go and work in branch officers of the Corporation. They are also eligible to get promotion and postings as Record sorters in the branch office; but they are unwilling to leave Regional Office.

6. Having heard the arguments of the learned

counsel on both sides we feel that there is no denial of the benefits of pay scale of Record sorters to such of the applicants who are seniors. The respondents have offered in the counter affidavit that 'the moment the applicants express their willingness to be posted as Record sorters, they will be posted as Record sorters ~~in the~~ in the branch offices' and that the higher grade is now available to seniors in the service. The Corporation is also taking steps ^{to} ~~amend~~ the recruitment regulations for redressing the grievance, if any, of the applicants and Daftries.

7. In substance the applicant wants to continue to remain in the Regional Office and get the benefit of higher scale which is available to seniors who are willing to go and work in branch office. In such circumstances we are reminded of the principles laid down by the Privy Council in *Kodoth Ambu Nair V. Echiken Charkera Kely Nair*, AIR 1933 P.C. 167. At page 169 it was observed.

".....It is well accepted principle that a party cannot both approbate and reprobate. He cannot to use the words of Honeyman, J, in *Smith V. Baker*(1): "at the same time blow hot and cold. He cannot say at one time that the transaction is valid and thereby

obtain some advantage to which he could only be entitled on the footing that it is valid, and at another say it is void for the purpose of securing some further advantage....."

8. Dealing with the subject Spencer Bower in his celebrated book "The law Relating to Estoppel by Representation, 1977 Edn. at page 336, states that:

".....an election may yet be effective as between the parties, even though it has not been communicated by the elector to the other party, in a case where, though that other party has not been prejudiced, the elector has accepted a benefit which could be his only because he has followed one course rather than the other. In such a case he will not be allowed to reverse his choice and to follow the second course available, while he retains the benefit, which could be his only if he followed the first course. The principle which brings about this result is sometimes stated as declaring that a man may not simultaneously approbate and reprobate, or may not blow "hot and cold"....."

9. The above principle of law is squarely applied in the instant case. The applicants have the choice either to continue at the Regional Office and enjoy the benefit available there in with the lower scale or to indicate their willingness ^{to go to branch offices} if they are prepared to go and work in the branch offices. ⁱⁿ Then ⁱⁿ terms of the offer made by the respondents they would also get the promotion and higher scale.

10. Identical contention which is raised in

this case by the applicants was rejected by the Central Administrative Tribunal in a case reported in Anil Kumar Bose V. The Presidency Post Master and others (1986 ATJ 50). The applicants therein who were working as Shroff claimed the pay of a Clerk on the ground the work is the same applying the doctrine of equal pay for equal work. The Tribunal held that, unless the applicants who were working as Shroffs are also appointed to Clerical cadre which charges the nature of work, they cannot claim the benefits of clerical scale. Here in this case also the applicants cannot claim the benefit of higher scale till they express their willingness to go and work in branch offices and get the appointment as Record sorters.

11. Hence on the facts and circumstances of this case we are of the view that there is no grievance ^{of} ~~for~~ the applicant so as to enable us to invoke our ^a jurisdiction for granting reliefs in this case. In the result of the foregoing discussions we are of the


opinion that the application is devoid of merits.

It is liable to be dismissed. Accordingly we do

so. There is no order as to costs.


(N. DHARMADAN)
Member (Judicial)

31.1.90


(S.P. MUKERJI)
Vice Chairman

31.1.90

31st day of January 1990

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