

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.909/93 & O.A.528/94

Friday, this the 24th day of June, 1994.

CORAM:

HON'BLE SHRI N DHARMADAN(J)

HON'BLE SHRI S KASIPANDIAN(A)

OA-909/93

1. KP Madhusoodanan,
Assistant Grade(V),
Passport Office, Kozhikode.
2. V Sundara Raman,
Assistant Grade(V),
Passport Office, Kozhikode.
3. Mrs Susamma Alex,
Assistant Grade(V),
Passport Office, Kozhikode. - Applicants

By Advocate M/s Shafik MA & KS Bahuleyan

Vs.

1. Union of India represented by
Secretary,
Ministry of External Affairs,
Government of India,
New Delhi.
2. The Joint Secretary(CPV) &
Chief Passport Office,
Ministry of External Affairs,
New Delhi.
3. The Secretary,
Department of Expenditure,
Ministry of Finance, New Delhi. - Respondents

By Advocate Mr S Krishnamoorthy, ACGSC

O.A-528/94

1. Rosamma John, Assistant Grade(V),
Regional Passport Office,
Ministry of External
Affairs, Ernakulam.
2. Annie Victor -do-
3. Lalitha Chacko -do- - Applicants



4. TP Leela, Assistant Grade(V),
Regional Passport Office,
Ernakulam.
5. Sarada R Varma -do-
6. Rancy JC -do-
7. NA Saraswathy -do-
8. CG Rajan -do-
9. P Narayanan -do-
10. S Umadevi -do-
11. B Prasannakumari -do-
12. CI Chacko -do-
13. K Prasannakumari -do-
14. P Sreekumari -do-
15. P Indiramma -do-
16. KS Raveendran -do- - Applicants

By Advocate Mr KRB Kaimal

Vs.

1. The Union of India represented
by the Secretary to Government,
Ministry of External Affairs,
CPV Division, New Delhi.
2. The Joint Secretary(CPV) &
Chief Passport Officer,
Ministry of External Affairs,
New Delhi. - Respondents

By Advocate Mr S Krishnamoorthy, ACGSC

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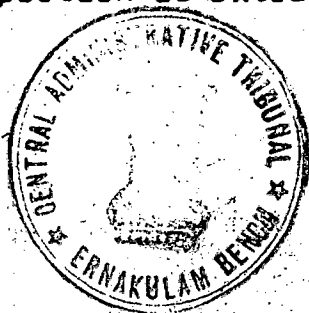
N DHARMADAN(J)

These cases are heard together and disposed of by
common order on consent of parties, since the issues arising
for consideration are identical.



2. Facts in OA-909/93: Three applicants, who are working as Assistant Grade(V) in the Passport Office, Kozhikode (first applicant was promoted as Superintendent pending the case) have jointly filed this application for quashing Annexure-A1 order passed by the Ministry of Finance rejecting their request for getting higher scale of pay which is being paid to the Assistants in the Ministry of External Affairs applying the principles of 'equal pay for equal work'.

3. The applicants were getting the scale of Rs.425-700 before the report of the IVth Pay Commission, while the scale of pay for Assistants in the Central Secretariat was Rs.425-800. The IVth pay commission recommended Rs.1400-2300 and 1400-2600 respectively for the above two posts. But the Ministry issued a further order revising the scale of Assistants attached to the Central Secretariat from Rs.1400-2600 to Rs.1640-2900 giving retrospective effect from 1.1.1986. The applicants were denied the benefit of the above revision inspite of repeated requests. According to the applicants, they are discharging same duties and responsibilities of their counterparts working in the Ministry and they have produced sufficient materials to substantiate their case that there is absolutely no substantial difference between the duties, responsibilities and nature of work etc. A comparative statement was also given by the applicants. The relevant portion is extracted below:



Officials in Chief Passport office in various Passport offices and at Headquarters

GRADE AND CATEGORY

(a) Grade V and Group 'C'

(b) Area of work. In Passport Offices in India and at Headquarters

(c) Nature of work

(3) Assistants - Notings, drafting, desk work and signing of Passports and rendering other miscellaneous services on Passports. As per the latest notification of Government of India Assistants in Chief Passport Office are delegated power as Passport Issuing Authorities.

(d) Feeder Category:

Upper Division Clerk
Scale of pay of Upper Division Clerks
1200-30-1560-EB-40-2040

(e) Mode of filling up of vacancies

1) By promotion from Upper Division Clerks and transfer from Indian Foreign Services (B) and State Government

2) Lower Division Clerks are recruited through Staff Selection Commission

Scale of Pay:
950-20-1150-EB-25-1500

Officials in the main Ministry and Missions abroad

GRADE AND CATEGORY

Grade V and Group 'C'

Headquarters, Indian Missions abroad and in Passport Offices in India

Assistants ; Noting and Noting and drafting, desk work and rendering consular services including miscellaneous services on Passports. Signing of Passports and other travel documents.

Feeder Post:

Upper Division Clerk
Scale of pay of Upper Division Clerks
1200-30-1560-EB-40-2040

Filling up of vacant posts

50 percent by promotion from Upper Division Clerks
50 percent through Staff Selection Commission

Lower Division Clerks are recruited through Staff Selection Commission

Scale of Pay:
950-20-1150-EB-25-1500"

They further submitted that this fact was accented by the second respondent and he recommended the revision of scale in Annexure-A3. It reads as follows:

"I wish to bring to your kind notice the demand of Assistants in the Central Passport Organisation Cadre, which has the status of a subordinate office



of this Ministry, for parity between their pay scale and that of the Assistants of the Central Secretariat Service and Indian Foreign Service(B) cadre. The relevant facts of the case may be seen in the statement enclosed.

2. I shall be grateful if you could kindly look into the matter and impress upon the authorities for a favourable decision on the subject. This will go a long way in meeting their genuine grievance for which they have been representing ever since the report of the 4th pay commission has been implemented."

They have also brought to our notice an office memorandum Annexure-A2 issued by the Government on 30.7.1990 by which the revision of pay was made pursuant to the direction in the judgement of the Central Administrative Tribunal, Principal Bench in O.A-1538/87. The relevant portion of the said O.M. reads as follows:

"The undersigned is directed to say that the question regarding revision of scale of pay for the post of Assistants in the Central Secretariat, etc. has been under consideration of the Government in terms of order dated 23rd May 1989 in O.A.No.1538/87 by the Central Administrative Tribunal, Principal Bench, New Delhi for some time past. The President is now pleased to prescribe the revised scale of Rs.1640-60-2600-EB-75-2900 for the pre-revised scale of Rs.425-15-500-EB-15-560-20-700-EB-2900 for duty posts including the Assistant Grade of Central Secretariat Stenographers Service with effect from 1.1.1986. The same revised pay scale will also be applicable to Assistants and Stenographers in other Organisations like Ministry of External Affairs which are not participating in the Central Secretariat Service and Central Secretariat Stenographers Service but where the posts are in comparable grades with same classification and pay scales and the method of recruitment through Open Competitive Examination is also the same."

It is this Office Memorandum that really gives the cause of action for the applicants.

4. As indicated above, according to the applicants, the nature of duties, responsibilities, selection proceedings, qualification etc. vis-a-vis the duties, responsibilities etc. in both the posts are exactly same so much so applying



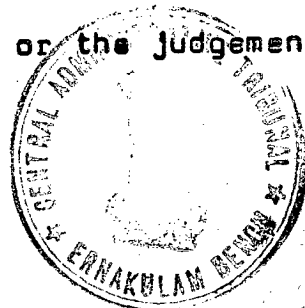
the principles of 'equal pay for equal work' the applicants are entitled to the same pay which are being paid to the applicants/Stenographers in the Central Secretariat and Ministry of External Affairs.

5. Respondents have filed a reply. We have gone through the same. According to us, it has been filed without even understanding the main issue and grievances of the applicants. It does not give any satisfactory and relevant materials to sustain the plea of the respondents in para 10. It is as follows:

"Nature of work and duties of Assistants in CPD and Ministry of External Affairs is not the same. Assistants in the Ministry of External Affairs have to shoulder additional responsibility."

They have not indicated what are the additional responsibilities shouldered by the Assistants in Ministry of External Affairs. The reply is not at all helpful for deciding the disputes between the parties.

6. Applicants have filed a rejoinder on 22.3.1994 and an additional statement on 30.5.1994. They have denied the statements in the reply. A detailed comparative statement of duties and responsibilities of the two posts filed by the applicants remain unrebutted in this case. Even though respondents were given sufficient time to file their reply to the above statement of the applicants and also to produce the judgement of the Principal Bench in O.A-1538/87, they did not produce anything on the judgement, nor filed any



statement supplementing their reply.

7. Facts in the connected case, O.A-528/94: Sixteen applicants working in the Passport Office, Ernakulam have jointly filed the O.A. for quashing an office memorandum Annexure-A1 which was passed pursuant to a direction in an earlier judgement in the case filed by the same applicants. Thus they are coming for the second time for the very same reliefs. The order is laconic and it is unsustainable.

Annexure-A1 reads as follows:

"The undersigned is directed to refer to the representations dated 16.12.93 submitted by Smt Rosamma John and 15 other Assistants in Regional Passport Office, Cochin regarding revision of the scale of pay and to say that the issue was examined in detail in consultation with the concerned Department in the Government of India, but it was found not possible to revise the scale of pay of Assistants in the Central Passport Organisation to Rs.1640-2900."

Applicants are also raising an identical contention. The only difference is that they have filed O.A-1159/93. It was disposed of as per Annexure-A3 judgement on 19.7.1993. Accordingly Annexure-A4 representation was filed through proper channel on 16.8.1993, in which they have clearly stated that the Regional Passport Officer, Ernakulam is integral part of the Ministry of External Affairs. All the Assistants from Regional Passport Office are frequently transferred and posted in the Ministry of External Affairs and vice-versa. They are intertransferable posts. Specific instance of such transfers and postings are given in the original application. It is also submitted that the scale of Assistants in the

..8...



Regional Passport Office was Rs.425-700(prevised), whereas the same admissible to Assistants of Ministry of External Affairs was Rs.415-800. But after the IVth Pay Commission, a revised scale of Rs.1400-2300 was fixed in the case of Assistants in the Regional Passport Office, while a scale of Rs.1400-2600 was fixed in the case of Assistants in the Ministry of External Affairs. After the judgement in O.A-1538/87, a revised pay scale of Rs.1640-2900 was fixed for Assistants of Central Secretariat increasing the earlier scale. Hence the applicants are aggrieved and ^{they} submitted representation. When the same was not considered, they approached this Tribunal earlier. It was disposed of with directions. According to them, even though they have specifically raised the question of discriminatory treatment and denial of same pay by applying the principles of 'equal pay for equal work' none of them was considered by the Government while passing Annexure-A1 order and it is illegal and liable to be quashed.

8. A reading of the impugned order makes it crystal clear that there is no application of mind that the respondents did not consider any of the points raised in the earlier case or in the representation inspite of direction by this Tribunal. Even though there was no specific direction focussing the attention of the respondents to the relevant points, the main purpose of the disposal of the case of the applicants was to consider their grievances and pass order redressing the same in accordance with law.



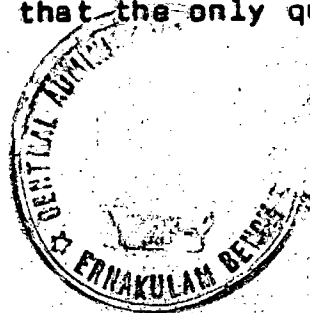
9. When this case came up for admission, after hearing the learned counsel on both sides, this Tribunal passed an order for posting it along with O.A-909/93 for a common disposal. They were also given sufficient opportunity to file the reply. The respondents could have filed either a separate reply or adopted the reply already filed in the connected case. But inspite of four postings after admission, no reply was filed. On 15.6.1994 when the case was taken up, the learned counsel for respondents again requested for time to file reply. We passed the following order on that day and posted the case today for final hearing along with the connected case:

"Even though the learned counsel for respondents has specifically asked for a week's time for filing reply, no reply has been filed. In a connected case, OA-909/93 posted along with this case, a reply has been filed. There is nothing wrong in adopting that reply to this case if the respondents so decide.

At the request of the learned counsel for respondents post for disposal on 24.6.94."

Learned counsel for the respondents did not file any statement or any explanation as to why he has not complied with the directions of this Tribunal issued on 15.6.1994. There is no denial of the facts stated by the applicants. There is absolutely no material on the side of the respondents to controvert the allegations made by the applicants. We are handicapped. No assistance from the Government counsel. He cited decisions and argued without any supporting materials or files to sustain this plea.

10. After hearing the learned counsel on both sides, we are satisfied that the only question which is to be considered



on the facts and circumstances is, as to whether the duties, responsibilities and job requirements for the two post of Assistants in the Passport Office and their counterpart in the Ministry are same and identical for the purpose of applying the principles of 'equal pay for equal work'.

11. It is a settled proposition of law that when the job requirements, selection proceedings, the duties, responsibilities etc. of two posts are same, the pay should also be ^{the 2} same. There is no legal justification in fixing two different scales for the same, unless there is supporting materials to sustain the higher scale for one ^{of 4} such posts. Otherwise it would hit by the vice of Article 14 and that should be removed. There is no such material in this case. Even if ^{Government 4} we accept the bald statement of the learned/counsel that the two posts are carrying different duties and responsibilities, no decision can be taken ^{to be} without any supporting materials. It is also ⁴ mentioned ⁴ that when such a plea is taken in the reply, it should be supported by sufficient materials or evidence, particularly when the applicants have given sufficient details ⁴ with uncontroverted averments in their applications.

12. Learned counsel for the respondents relied on two cases in State of M.P. and another Vs. Pramod Bhartiya and others, AIR 1993 SC, 286 and Federation of All India Customs



and Central Excise Stenographers (recognised) and others Vs. Union of India and others, 1988 SC, 1291 and submitted that the application is to be rejected on the ground that there is difference in the duties, responsibilities etc. of the applicants when compared with ^{that of} their counterparts in the Ministry referred to above. As indicated above, these decisions would help the respondents only if they discharge their duty of controverting the allegations and averments in the original application or at least produce some materials to sustain their case. We have also gone through the facts of these two cases. The facts in these cases are distinguishable. In the instant case, the applicants have produced sufficient details and materials which are extracted above. In the light of the available materials, we are of the view that the applicants are discharging same duties and responsibilities which are being discharged by their counterpart in other departments referred to above. Hence according to us, these decisions are not applicable to the facts of this case.

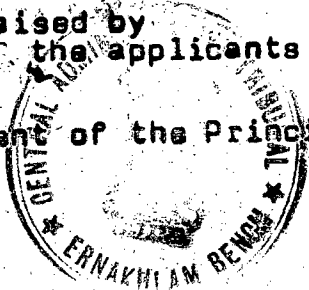
13. Mr Shafik, the learned counsel for applicants in O.A. 909/93 relied on the following decisions. P Savita and others Vs. Union of India and others, AIR 1985 SC, 1124 and Randhir Singh Vs Union of India and others, AIR 1982 SC, 879. As indicated above, the applicants have produced sufficient materials which ~~were~~ accepted by the Joint Secretary in his recommendation Annexure-A3 extracted above. But no document



is produced before us to state that the recommendation has not been accepted by the Ministry of Finance even though the learned counsel for respondents orally submitted before us that it was not accepted by the Ministry of Finance and the same has been rejected. Even the order rejecting the same has not been produced before us. In spite of specific direction to produce the copy of the judgement in O.A-1538/87 referred to in Annexure-A2, the learned counsel for the respondents did not produce the same for our perusal. He has also not given any explanation as to why he is unable to produce the same. As indicated above, we did not get any assistance from the respondents or their learned counsel for deciding the issue arising in this case.

14. In the light of the Annexure-A3 recommendation in O.A-909/93 and the detail statement produced by the applicants in that case coupled with the undisputed facts stated by the applicants in O.A-528/94, we are of the view that the Government did not consider the grievances of the applicants in spite of directions. They have not examined any of the aspects pointed out by the applicants in this case with reference to the facts and figures produced by the applicants before us.

15. In the light of this undisputed facts stated by the applicants, we are inclined to accept the case of the applicants. But because of the failure of the respondents to meet the points raised by the applicants and produce necessary materials on the judgement of the Principal Bench, we think it would be proper to



give the respondents one more opportunity to examine the grievance of the applicants in the light of the aforesaid materials and details produced by the applicants and the recommendation in Annexure-A3 and take a decision in accordance with law bearing in mind the above observations/findings. It shall be complied with within a limited period of three months from the date of receipt of a copy of this order.

16. Accordingly, we dispose of these two applications directing the first respondent to take final decision in respect of the claim of the applicants for getting parity of pay as claimed by them in the O.A., uninfluenced by any other considerations and the statements in the reply filed by the respondents. The impugned orders in both the cases are hereby quashed so as to enable the respondents to consider the grievances of the applicants in a fair manner in the above line.

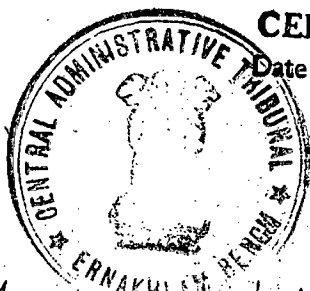
17. The applications are accordingly disposed of as above.
No costs.

Dated, this the 24th day of June, 1994.

sd/-
(S KAS IPANDIAN)
MEMBER(A)

sd/-
(N DHARMADAN)
MEMBER(J)

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Date 7 7 94

Mmm
Deputy Registrar

Enclosure

List of Annexure