

Reserved
(On 27.05.2014)

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,
LUCKNOW**

Dated: This the 19th day of July, 2014

Original Application No. 355 of 2011

Hon'ble Ms. Jayati Chandra, Member (A)
Hon'ble Dr. Murtaza Ali, Judicial Member

1. Narmada Shanker Awasthi, S/o Sri Swaroop Awasthi, R/o D-Block House No. 721, Awas Vikas Colony, Unnao.
2. Uma Shankar Srivastava, S/o Sri Daya Shanker, R/o 38 Gandhi Nagar, Unnao.

... Applicants

By Adv: Shri R.C. Saxena

VERSUS

1. Union of India through Secretary, Ministry of Post, Dak Bhawan, New Delhi – 110001.
2. Director General of Post, Sansad Marg, Dak Bhawan, New Delhi.
3. Chief Post Master General, U.P. Circle, Lucknow.
4. Assistant Postal Superintendent, Sub Division, Unnao, Chief Post Office, Unnao.

... Respondents

By Adv: Shri S.P. Singh

ORDER

By Hon'ble Dr. Murtaza Ali, Member (J)

Through this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants seek to quash the impugned order dated 19.07.2010 passed by respondent No. 4 with a direction to the respondents to pay the same amount of salary and allowances from the year 2001 which is admissible and paid to the departmental Postman (wrongly stated as 'regularly appointed Gramin Dak Sevaks' in the relief clause of OA) and seek further direction to the respondents to consider

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the case of the applicants' as a special case for appointing them as Postman (wrongly stated as 'regular Gramin Dak Sevaks').

2. This is the second round of litigation. The first OA 179/2010 filed by the applicants was disposed of vide Tribunal's order dated 26.04.2010 in which the respondents were directed to dispose of the representations of applicants. In compliance of said order, the respondent No. 4 has passed the impugned order dated 19.07.2010 rejecting the claim of applicants for 'equal pay for equal work'. Being aggrieved with the said order, the applicants have filed the present OA.

3. The brief facts of the case are that the applicant No. 1 & 2 were appointed as Gramin Dak Sevak on 23.07.1979 and 07.10.1991 respectively. Upto the year 2001 they were required to work in their respective delivery zones, but from the year 2001 the work-load of the applicants increased four times and they cannot complete the work of delivery of dak within 04 to 05 hours. They are required to cover about 30 to 35 Kms for delivering of dak at different places which takes about 06 to 07 hours and it takes about 02 hours for taking the dak from the post office and in this way the applicants work 08 to 09 hours daily. It has been stated that the regularly appointed Postmen also discharge the same nature of duties for 08 hours daily like the applicants, but the applicants are not paid the same pay and allowances. Thus, they are discriminated from the regularly appointed Postman which is a violation of Article 14 and 16 read with Article 39 (d) of Constitution of India. It has also been alleged that the applicants were declared unsuccessful whenever they appeared in

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departmental examinations for promotion under prescribed quota due to non-fulfillment of illegal wishes of concerned authorities.

4. In the counter reply filed by respondents, it has been stated that the applicant No. 1 and 2 are working on the post of GDS DA at Unnao Head Office in Beat No. 11 and 12 respectively. The work load of Beat No. 11 and 12 are 4.45 hours and 4.30 hours respectively. It has been stated that the departmental Postmen work in town area of Unnao district whereas the applicants are engaged to work in Industrial/village area connected with the town area of Unnao district. It has been denied that the work load of delivery of mail has increased. The services of private couriers, E-mail and mobile are being utilized more frequently. It has also been stated that the work load of the applicants' beats do not exceed more than 05 hours and the distance of any such beat does not exceed 25 Kms. The applicants cannot be given permanent cadre of Postman without qualifying the examination or coming into the merit of seniority as per the GDS Rules and they cannot be paid equal salary as admissible to the permanent cadre of Postman.

5. Heard Shri R.C. Saxena, learned counsel for the applicants and Shri S.P. Singh, learned counsel for the respondents and perused the entire record.

6. Learned counsel for the applicants has argued that the applicants are doing the same nature of work and for same period as departmental Postmen are doing, but they are not being paid equal pay and allowances as admissible to the departmental Postmen which is a violation of Article 14 and 16 read with Article 39 (d) of Constitution of India.



7. Learned counsel for the respondents has submitted that the applicants are working on the post of Gramin Dak Sevak – Delivery Agent at Unnao Head Office and their mode of recruitment and working hours are different from departmental Postmen. Their service conditions are governed by Department of Post Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011. It has also been stated that the departmental Postmen work in the town area of Unnao District whereas the applicants have been engaged to work in Industrial/Village area for a period of 04 to 05 hours per day and, therefore, they are not entitled to the same pay and allowances as admissible to the departmental Postmen.

8. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection to law and Article 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. 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 is certainly a constitutional goal. Article 39(d) of the Constitution proclaims "equal pay for equal work for both men and women" as a directive principle of State Policy. In the case of *Official Liquidator v. Dayanand and others* reported in (2008) 10 SCC 1 it has been held by Hon'ble Supreme Court that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work,

the value judgment, responsibilities, reliability, experience, confidentiality, functional need etc.

9. Before turning to various principles laid down by the Hon'ble Supreme Court we may to first examine whether the applicant has succeeded to prove that they are similarly situated and are performing the same nature of work and for same duration as departmental Postmen are performing. The learned counsel for the applicants has drawn our attention to annexure No. R-4 which is said to be the photocopies of attendance register relating to the month of February, 2011 in which the time of arrival of applicants in the office is mentioned as 9:10, 9:15 etc. and he has also drawn our attention to annexure No. R-1 and R-2 in which the time of delivery slip has been mentioned as 5:00 PM, 5:10 PM etc. On the basis of these documents the learned counsel for the applicant has contended that the applicants used to perform their duties from 9:00 AM to 5:00 PM (08 hours) as the other departmental Postmen do. As regards the nature of work it is not disputed that the applicants as well as departmental Postmen are performing the same job of distributing the dak.

10. The learned counsel for the respondents has categorically denied that the applicants are performing their duties for 08 to 09 hours and submitted that the work load of applicants was assessed as per standard formula provided by the Department of Post on 23.07.2010 and it was found that the work load of beat No. 11 and 12 were 4.45 hours and 4.30 hours respectively, where the applicants are performing their duties. The copies of said assessment has also been filed by the respondents alongwith their counter reply as annexure No. 1. It has also been

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submitted that the work load of delivery of mail has been decreased due to services of private couriers and utilization of E-mail and mobile. It has also been contended that the distance of any such beat does not exceed 25 Kms and the work load of applicants beat does not exceed more than 05 hours. It has also been mentioned that the service conditions of applicant are governed by GDS (Conduct and Engagement) Rules, 2011 and GDS can be promoted to Group 'D' post after qualifying the departmental examination, but the applicants could not qualify in the said examination due to in-competency and now they are trying to get the same pay and allowances as admissible to departmental Postmen, which cannot be granted as they are entitled to get the pay and allowances as per rules under which they were recruited and working for 04 to 05 hours. The learned counsel for the respondents has also drawn our attention to the copy of attendance register filed by the applicants as annexure No. R-4 and pointed out that except applicants no other employee has indicated the time of arrival in the attendance register as it is not required to mention the time of arrival in the attendance register. The applicants intentionally mentioned the time under their signatures for creating evidence in their favour, whereas, the respondents are taking the work from the applicants which is to be completed within 04 to 05 hours. It has also been contended that the applicants can refuse to work beyond 05 hours, if they complete their distribution of dak in accordance with the standard formula prescribed by the Department of Posts.

11. In the case of *Union of India v. Dineshan K.K.* reported in (2008) 1 SCC 586 the Hon'ble Supreme Court has held as under:-

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"Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work of equal quality and all other relevant factors are fulfilled."

12. In the case of *Federation of All India Customs and Central Excise Stenographers (Recognized) v. Union of India* reported in (1988) 3 SCC 91 Hon'ble Supreme Court explained the principle of "equal pay for equal work" by holding that differentiation in pay scales among government servants holding the same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The same amount of physical work may entail different quality of work, some more ^{¶126}sensitive, some requiring more tact, some less — it varies from nature and culture of employment. It was further observed that judgment of administrative authorities concerning the responsibilities which attach to the posts and the degree of reliability expected of an incumbent would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court.

13. In the case of *Food Corp. of India v. Ashis Kumar Ganguly* reported in (2009) 7 SCC 734 the Hon'ble Supreme Court has held as under:

"The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be

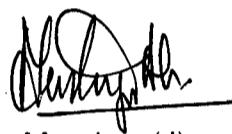
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qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors."

14. It is well settled that the principle of "equal pay for equal work" could be invoked only when the employees are similarly situated and their mode of recruitment, qualification, nature of work and experience are also same. In the case of **State of Orrisa Vs. Bala Ram Sahu and other** reported in **2003 (1) SCC 250**, Hon'ble Supreme Court has held that equal pay for equal work would depend not only on the nature and volume of work but also on the qualitative differences as **reliability** and **responsibility** and though the functions may be the same, the responsibility does make a real and substantial difference. It is also a settled law that the burden to establish the right to equal pay is on the person claiming the same and once this initial burden is discharged, the burden is shifted to the State to establish that the services are dissimilar in essence and substance and the Court must be satisfied with regard to similarity of work and other relevant factors from clear and acceptable factors.

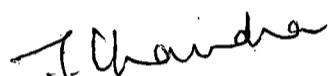


15. In the light of the discussions above and the facts and circumstances of the case we are of the view that the applicants were appointed as GDS DA and they are governed by GDS (Conduct and Engagement) Rules, 2011 and they have to work 04 to 05 hours daily. They also could not qualify the departmental examination for promotion to the post of Postmen. As their mode of recruitment and service conditions are totally different from the departmental Postmen they cannot be equated with them and the principle of "equal pay for equal work" could not be invoked in the case of applicants. Accordingly, the OA is dismissed. No order as to costs.



Member (J)

/pc/



Member (A)