

(X)

Per Tribunal

Date

17/3/94

Applicant in person / by H.J. Acharya
Advocate / Respondent by V.C. Regu
Council. Dy. Consene

15-6-94

The matter adjourned to 15/6/94
for Final Hearing

Dy. Registrar

Pt 14-6-94

As no division bench is
available on 15-6-94 the
matter adjourned to 21-7-94.

for Dep. Reg

Date:- 21-7-94

Mr. H.J. Acharya, Counsel for applicant.
Mr. V.C. Regu, Counsel for respondents.
At the request of Mr. Acharya, Counsel,
adjourned to 29-7-94.

(V. RAMAKRISHNAN)
M(A)

(M.S. DESHPANDE)
VC.

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Order/Judgment despatched
to Applicant respondent (s)
on 12/17/94
20/8/94

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 94/89

~~Transfer Application No~~
~~xxxxxxxxxxxxxxxxxxxx~~

DATE OF DECISION: 29.7.94

R D Kabadi Petitioner

Mr. H.J.Acharya Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr. S.C.Dhawan Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri **Justice M.S.Deshpande, Vice Chairman**

The Hon'ble Shri **V. Ramakrishnan, Member (A)**

1. To be referred to the Reporter or not ? **no**
2. Whether it needs to be circulated to other Benches of the Tribunal ? **no**


V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A. NO. 94/89

Ramesh D. Kabadi

..Applicant

V/s

Union of India & 2 ors.

..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.
Hon. Shri V. Ramakrishnan, Member(A)

Appearance:

Mr. H J Acharya
Counsel for the applicant

Mr. S C Dhawan
Counsel for the respondents

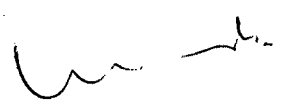
ORAL JUDGEMENT:
(Per: M.S. Deshpande, Vice Chairman)

DATED: 29.7.94

By this application the applicant challenges the lowering of the pay scale which would have been admissible as a Projectionist from Rs.330-560 to Rs. 260-400 and a direction to grant him pay scale Rs.330-560 together with the difference in pay and post retirement settlement dues.

2. The applicant was appointed as a Peon on 17.9.1963 in the pay scale of Rs.196-232. When the Projectionist was promoted to a higher scale on 15th July 1985, the applicant came to be appointed by the order dated 31st July 1985 as a Projectionist in the scale of Rs. 260-400. The applicant retired on 3.2.1988. According to the applicant since he had been doing the same work as the Projectionist, whom he used to help and who was promoted, his pay scale should not have been down graded and seeks 0 reliefs enumerated above.


3. According to the respondents the applicant was not qualified to be appointed as a



Projectionist, but since the department required the services of a Projectionist and it would not have been possible to appoint a qualified person to the post the scale of the post was down graded to Rs.260-400 from Rs. 330-560 and the applicant came to be appointed as a Projectionist and that the consideration of equal pay for equal work could not be invoked in the present case and the applicant is not entitled to any relief.

4. The letter dated 19th July 1985 addressed to the CMO shows that the post of Projectionist which was vacant had created problems because the incumbent had been promoted and posted to CPROs office and the Family Planning Campaigns could not be proceeded vigorously. It also mentioned that the applicant used to assist the Projectionist on many occasions and had undergone some training in operation of projector for which he had also produced a certificate. It was, therefore, suggested that he should be trade-tested for assessing the suitability and if the vacancy should be filled by appointing him. By the order dated 31.7.85, Annexure II, the applicant had taken charge of the post of Projectionist in the grade Rs. 260-400 on ad hoc basis with effect from 31.7.1985.

5. It is apparent that the applicant had filled up the same post which was vacated by the earlier Projectionist who was drawing the scale of Rs.330-560. There is no denial of the position that the applicant performed same work as his predecessor. The only reason for down-grading the post to Rs. 260-400 was that the applicant did not possess the requisite qualifications for the post viz., Matriculate holding of trade certificate of training in Audio-Visual Aids and Electrical equipment issued by Institutes recognised by State Governments, licence to operate film projector and Cinema machine, and practical experience of two years with any agency. These were the qualifications prescribed for direct recruits. The post could not have been filled up by promoting the applicant because the method of recruitment was only direct recruitment. In the circumstances in which the department was placed

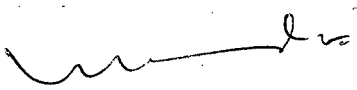


there was no other way for it than to grant an appointment to the applicant to the post of Projectionist.

6. In K.P. POI Vs. UNION OF INDIA, 1993(1) ATJ 198, the Calcutta Bench of this Tribunal pointed out that the principle of equal pay for equal work had been violated in that case, because even if the plaintiff was not duly qualified and could not perform all the duties of the office, there could be no doubt that the plaintiff had been given promotion to the post of Film Projectionist-cum-Mechanic. But the scale of pay which he was getting as Helper was kept intact. Though the particular rule empowered the General Manager to do that, such rule appeared to be arbitrary in view of the Supreme Court judgment in the Randhir Singh's case reported in AIR 1982 SC 879 as regards 'equal pay for equal work'. Here, there is no question of attracting any rule but only application of the same principles which the Tribunal applied in K P Poi's case. The absence of qualification cannot be a distinguishing feature because the applicant was found suitable and competent for discharging the functions of Projectionist. There cannot be any valid ground in the premises for down grading the pay of the Projectionist only when it came to the appointment of the applicant, and the applicant is entitled to challenge this as arbitrary under Article 16(1) of the Constitution.

7. The next submission was that the scale Rs.330-560 to ad hoc promotions could not have been granted to the applicant. In the present case we are not concerned with the question of ad hoc promotions because the post was down graded to Rs.260-400 from Rs. 330-560 without any supportable reason.

8. With regard to the relief that can be granted to the applicant, it is apparent that he should have approached the Tribunal within one year and he cannot claim any actual monetary benefits prior to the period of one year before the filing of the application. The present application was filed on 25.1.1989 and the relief that can be granted to the



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applicant would be only from 25.1.1988. The applicant has retired on 3.2.1988. We direct the respondents to notionally grant to the applicant the pay scale of Rs.330-560 in lieu of Rs. 260-400 and give him the benefit of that scale from 25.1.1988 onwards. The applicant would also be entitled to terminal benefits on the basis of the pay to which he would be found entitled according to this fixation. All his entitlements shall be worked out and the arrears paid to him within four months from the date of receipt of a copy of this order. No order as to cost.



(V. Ramakrishnan)
Member(A)



(M.S. Deshpande)
Vice Chairman