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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 495/89
~~XXXXXX~~

198

DATE OF DECISION 24.6.92

Shri S.P.Mehtha Petitioner

Shri C.U.Singh Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri R.K.Shetty Advocate for the Respondent(s)

CORAM

The Hon'ble Ms. Usha Savara, Member (A)

The Hon'ble Mr. S.F.Razvi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

S. Razvi
24.6.92

(11)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

CA.NO. 495/89

Dr.S.P.Mehtha

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Ms. Usha Savara
Hon'ble Member (J) Shri S.F. Razvi

Appearance

Mr.C.U.Singh
Advocate
for the Applicant

Mr.R.K.Shetty
Advocate
for the Respondents

JUDGEMENT

Dated: 24.6.92.

(PER: Usha Savara, Member (A))

The applicant, who was appointed as a Librarian Gr.I in National Defence Academy (NDA) in September 1970 on the pay scale of Rs.350-800 has filed this application with the prayer that he be given the pay scales recommended by University Grants Commission (U.G.C.) in the grade of librarian w.e.f. 1.1.1983 thereby fixing his pay as on 1.1.1983 at Rs.1500-2500 and revising it w.e.f. 1.1.1986 in the scale of Rs.4500-7300. In the alternative, it is prayed that the respondents be directed to fix his pay scale w.e.f. 1.1.1983 in the grade of Deputy Librarian in the scale of Rs.1200-1900 and to revise the same w.e.f. 1.1.1986 in the scale of Rs.3700-5700, and also to grant him 3 advance increment, as he has obtained his Ph.D degree. He has also prayed for consequential benefits, and a declaration that his age of retirement be fixed at 60 years, and also that he be given N.D.A. allowance of Rs.150/- (which is being given to other faculty members) from the date on which the said allowance was first granted to others.

2. The applicant is the head of the Department and is fully responsible for the working of the library. He has 2 librarians Gr.II and 5 Gr.III librarians working under him. When he joined the post through the U.P.S.C. NDA was not affiliated to any University, and therefore did not follow the scales of pay prescribed by U.G.C. However, in 1969 a committee was formed under Dr.Mahajani to suggest upgradation and pay enhancements for the entire staff- teaching as well as non-teaching. Though the recommendations made by the committee were accepted in principle, no action was taken to implement them. In 1973-74, the syllabus of NDA was revised and NDA was affiliated with Jawaharlal Nehru University at New Delhi. At that time, U.G.C. scales were granted to academic staff by letter dated 20.1.1983 by the 1st respondent, but the scales for the librarians were left untouched. The librarians are part and parcel of the academic staff in any University or college including the NDA. Therefore, the omission of library staff for pay revision was clearly malafide and motivated specially since the Ministry of Education and Culture, Govt. of India had decided to upgrade the scales of pay of librarians and Directors of Physical Education w.e.f. 1.4.1980, as per Annexure-E dated 15.12.1982 . It was also decided to assist the State Governments if they wished to upgrade the scales of pay of the librarians and the Directors of Physical Education in State Universities and colleges affiliated to them. The minimum qualifications for librarians and Directors of Education were also prescribed by Annexure I to the letter dated 15.12.1982. It is the applicant's case that he possessed all qualifications as prescribed in the Annexure-I.

3. The applicant made representation to the respondent No.3 pointing out the unfair treatment meted out to the library staff, and requesting him to take up the case with appropriate higher authorities to bring the library staff on par with the teaching and non-teaching staff of NDA from 1983 onwards. Oral assurances were given but he continued to work on the same old pay scales of 1970. Though formally approved, yet he was not actually granted the scale of the Deputy Librarian. In 1987, he made a fresh representation to respondent No.3, and on 13.8.1988, addressed a representation to the President of India, but no positive steps were initiated towards granting of UGC scales, though the same had been already approved.

4. Mr.C.U.Singh, learned counsel for the applicant submitted that in 1988 the 3rd respondent was informed by the 2nd respondent that the question of upgradation of posts was under a cabinet ban and therefore, the applicant's case was not being taken up with the Government whereas the other civilian academic officers were being given revised scales of pay w.e.f. 1.1.1983, the entire library staff had been discriminated against and were denied the UGC scales of pay. This decision of the respondents was arbitrary, without any basis in law and grossly unreasonable. Since NDA had been affiliated to J.N.U. and the University was governed by UGC pay scales, how could the applicant have been denied the same?

5. The learned counsel's main plank for his case was that the applicant was performing the same duties as the librarians working in Universities and colleges affiliated to the Universities and therefore, he was entitled to get the same salary as those librarians, in short equal pay for equal work. He relied upon various Supreme Court decisions to substantiate his claim that equal pay must be granted and it must be granted from the date on which disparity arose.

It was argued that equal pay must be granted even if pay commission had not recommended it, once it is found that the duties discharged are the same.

6. The learned counsel for the respondents, Mr. R.K. Shetty vehemently contested the application. It was pointed out that the applicant was appointed as Librarian Gr.I as per terms and conditions applicable at the time, which were accepted by him. All Govt. orders relating to his pay scales have been implemented, including the fourth Pay Commission Report. The U.G.C. scales cannot be applied to him, as he is governed by the rules which are framed by the Govt./Ministry of Defence for librarians. The rules applicable to U.G.C. employees are not automatically applicable to Central Govt. employees, even if NDA is affiliated to J.N.U. So far as Mahajani committee Report is concerned, the same has not been accepted by the Govt. till date, and therefore, its recommendations are neither valid nor relevant. It was also pointed out by the learned counsel that the post of librarian Gr.I at NDA is under the purview of the Central Govt. and not UGC. Any revision of pay scales will be governed by Central Govt. orders, and the fact that all State Govts. were given the discretion to upgrade the pay scales of Librarians, and Directors of Physical Education is totally irrelevant, as the applicant is not an employee of the State Govt., but is governed by Central Govt. orders only.

7. The respondents had prepared a case for upgradation of the post of the Librarian Gr.I at NDA and approval had been accorded for examination of the case by A.S.E.C., which is the governing body for deciding the establishment of NDA. However, the A.S.E.C. has no powers to upgrade a post, they can only put up a case to the Govt. for proper orders. However, the proposal was not accepted in 1983. A fresh proposal has been forwarded in August 1989 to Army Headquarters for approval.

8. It was also contended by the learned counsel that the Tribunal has no jurisdiction to adjudicate upon this matter as it is an intricate matter, which only an expert body like pay commission can decide, with all its implications in relation to the corresponding posts and all other aspects. Besides, the prescribed qualification for the post of Librarian Grade I at the NDA was Degree of a recognised University and a Degree or Diploma in Library Science with about 5 years experience, whereas the qualifications prescribed for a Librarian or Deputy Librarian in a University is first or second class MA/M.Sc/M.Com plus a first or second class Bachelor of Library Science or Diploma in Library Science or a Degree of Master of Library Science being a preferential qualification with at least 7 years experience as a Librarian or in a responsible professional capacity. The applicant does not have the qualifications required for a University Librarian/Dy.Librarian, therefore he cannot claim the pay scales of University Librarian/Deputy Librarian as of right. The applicant has also not argued his case for equal pay for equal work by giving adequate details about his duties and responsibilities as compared to the duties and responsibilities of University Librarians/Dy.Librarians to substantiate his claim. The onus for making out a claim squarely lies upon the applicant, and since he has not done so the application deserves to be dismissed.

9. Finally, it is submitted that there is no justification for the applicant to equate or compare himself with other heads of departments of the Education Branch. The overall responsibility including financial control, supervision and administration of the library lies with the Principal. Therefore, even if it be held that since he belongs to non-teaching staff, ~~there can be no justification~~ **there can be no justification** for equating them. ~~Merely because the applicant works~~ **Merely because the applicant works**

in the Academy, he cannot be termed as academic staff. The UGC had recommended higher pay scales for civilian academic staff only at the NDA by their letter dated 20.1.1983, and since the applicant is not academic staff, the recommendations are not applicable to him.

10. We have heard the learned counsel for the parties, and given our careful consideration to the rival contentions as discussed above. We have perused the documents filed and the citations referred to by the parties in support of their respective claims.

11. While accepting the applicant's contention that he is a highly trained librarian, and author of an internationally known book, we have to admit that his qualifications are not as prescribed for the post of University librarian/Dy. librarian; he has also not adduced any material to show that the post in which he is working is identical to the post of University Librarian/Dy. Librarian. To claim equal pay for equal work, it must be adequately proved that the duties and responsibilities of the jobs are comparable - it is not enough that the nomenclature is the same, the quality of work performed must be the same. The higher qualifications for the post of University Librarians reasonably sustain the respondents' claim that these are two different grades with different scales of pay. The applicant's case for higher pay on this ground has to be rejected.

12. We may refer to the decision of the Apex Court in 1984 SCC(L&S) 329 Delhi Veterinary Association vs. U.O.I.

W. & Ors. - it was held that even if the court prima facie finds justification in petitioner's grievance regarding discrimination in pay, the court should not take up the question in isolation. The relevant paras 4, 5, & 9 may be profitably reproduced as under :-

"4. Since any alteration in their pay scale would involve modification of the pay scales of officers in the higher cadres in the same department and in the corresponding cadres in the other departments, the work of refixation of the pay scale should not ordinarily be undertaken by the court at this stage because the Fourth Pay Commission is required to consider the very same question after taking into consideration all the relevant aspects.

5. In addition to the principle of 'equal pay for equal work', the pay structure of the employees of the Government should reflect many other social values. Apart from being the dominant employer, the Government is also expected to be a model employer. It has, therefore, to follow certain basic principles in fixing the pay scales of various posts and cadres in the Government service. The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are, according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors.

9. In the above situation, we do not feel called upon to decide in isolation the question of discrimination raised before us. This is a matter which should be left to be decided by the Government on the basis of the recommendations of the Fourth Pay Commission."

13. The same view was taken by Gujarat High Court in M.G.Patel vs. State of Gujarat & Ors. (1981 (1) ASLJ page 436). Further, in 1981 (1) LLJ page 59 (Umesh Chandra Gupta & Ors. vs. Oil and Natural Gas Commission & Ors.) while dwelling upon, on an earlier judgment of Hon'ble Supreme Court in State of U.P. & Ors. v. J.P. Chaurasia & Ors. (1988 III SVLR (L) 243), it was observed : ".... the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts.

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More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different. That cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of ~~pay must~~ be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration." This view also finds support in the recent decision of the Supreme Court in the case of K.Vasudevan Nair & Ors. AISLJ Vol.37 Part III decided on 19.9.1990.

14. As a result of the foregoing discussion, we do not find it possible to accept the present application and the same is accordingly dismissed. The plea for raising the retirement age to 60 years was not pressed before us. No case for the grant of special N.D.A. allowance of Rs.150/- per month was made, and therefore, we are unable to allow the prayers of the applicant on these points. However, before parting with the case, we would like to mention that since the respondents are already siezed of the matter, and a fresh proposal for upgradation of the post was forwarded in 1989, it would be desirable, in the interest of equity that a final decision be taken by the Central Government within a reasonable period. In the result, the OA. is dismissed with no order as to costs.

Syafaz Huss.

(S.F.RAZVI)
MEMBER (J)

U. Savara
(MS.USHA SAVARA)
MEMBER (A)

mrj.