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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 22/96

Date of Decision: 18.9.97

Shri Swamidurai Sundereshan
Smt. Laxmi Viadyalingam. Applicant.

Applicant No. 1 in person. Advocate for
Applicant.

Versus

Union of India and others. Respondent(s)

Shri V.S. Masurkar. Advocate for
Respondent(s)

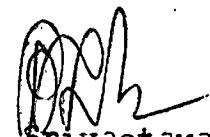
CORAM:

Hon'ble Shri. P.P. Srivastava, Member (A)

Hon'ble Shri.

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to
other Benches of the Tribunal? No


(P.P. Srivastava)
Member (A)

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

Original Application No. 22/96

Thursday the 18th day of September 1997.

CORAM: Hon'ble Shri P.P. Srivastava, Member (A).

Shri Swamidurai Sundereshan
working as Temporary -
Status - Permanent way Gang
Mate under Permanent way
Inspector (Construction),
Jesai, Taluka Uran, Dist. Raigad
and Residing at C/o P.W.I.(C) Jasai.

Smt. Laxmi Vaidyalingam,
w/o Shri Vaidyalingam
working as Temporary -
Status - Casual Raje
Under Permanent Way Inspector
(Construction), Jasai, Taluka
Uran Dist. Raigad and Residing
at C/o P.W.I. (C), Jasai.

... Applicants.

Applicant No.1 in person.

V/s.

The Union of India through
The Secretary of Railway Boards,
Ministry of Railways
Rail Bhavan, New Delhi.

The General Manager,
Central Railway, Mumbai
V.T.

The Chief Administrative
Officer (Construction)
Mumbai V.T. Central Railway.

Dy. Chief Engineer (C)
Central Railway, Dadar,

The Executive Engineer,
(Construction) Panvel
Central Railway.

The Permanent Way Inspector
(Construction), Jasai,
Central Railway.

... Respondents.

By Advocate Shri V.S. Masurkar.



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In this O.A. applicant No.2 is wife of late Shri Vaidyalingam who was working as monthly rated Permanent Way Gang Mate and the claim is with respect to the service of the applicant's husband when he was working as monthly rated Permanent Way Gang Mate in Construction Organisation. The facts concerning applicant No.1 will be considered and same will also cover the case of applicant No.2.

2. The applicant No.1 is working as Permanent Way Gang Mate in Construction Organisation. The applicants are working in the Construction Organisation as monthly rated casual Mate, somewhere from 1982 and 1983. The applicant has been granted temporary status from 1984. The applicant was granted the scale of Rs. 750 - 940. The main grievance of the applicant is that he is not granted the pay scale of Permanent Way Mates in Open line which is Rs. 950 - 1500.

3. The applicant has brought out that the Ahmedabad Bench in O.A. 547/88 observed that the Mate on Construction Organisation are entitled to the scale of Rs. 950 - 1500. Therefore according to the applicants the distinction sought to be made between Construction Mate and Open line Mate has thus disappeared. The applicants have submitted the representations on 5.10.95 and 17.11.95 which are placed at Annexure A5 and A6. In these

representations the applicants sought the relief on the basis of this Tribunal's judgement in O.A. 127/89 wherein the applicants were granted relief in as much as the applicants were granted Open line pay scale of Mate i.e. Rs. 950 - 1500 for the period that they had worked in Open Line. The operative portion of this judgement in para 9 reads as under:

" We therefore direct the respondents to pay to the applicants difference in wages at the same rate in the pay scale of Rs. 950 - 1500 from the dates they was transferred from the Construction Line to the Open line until they are repatriated to the construction line, within four months from the date of receipt of a copy of this order. There would be no order as to costs."

The applicants submitted that the case of the applicants were not considered for grant of same scale of pay i.e. Rs. 950 - 1500 for the period when they worked as Mate on Construction. The respondents Administration replied the representation vide their letter dated 6.12.95 which is placed at Annexure A1. The applicants claim was rejected by the respondents administration.

4. The main arguments of the applicants are that there is no discrimination in the work of Mate of Open line and Mate of Construction Organisation and therefore on the Principle of "equal pay for equal work" the applicants are justified in getting the pay scale of Rs. 950 - 1500 which is the pay scale of Mate on Open line.

5. The respondents have submitted the written statement, wherein they have brought out that the Bombay Bench decision quoted by the applicants in O.A. 127/89 which was disposed of on 7.6.95 does not deal with the question regarding the applicants entitlement on the ground of equal pay for equal work. Therefore the Bombay Bench decision is not applicable in the present case. The respondents have further brought out that the applicant No.1 and the husband of applicant No.2 was engaged casual labour Mate in the pay scale of Rs. 750 - 940 and are working in that capacity. The respondents administration have already paid to the applicants the difference in payment for the pay scale of Open line i.e. Rs. 950 - 1500 and Rs. 750 - 940 (which is the pay of the applicants) for the period that the applicants had worked on Open line.

6. The respondents have also brought out that the cause of action of the applicants if atall arose of 1982-83 and it cannot be agitated by the applicants in 1995. The respondents administration have also brought out that the applicants could have taken up this issue in O.A. 127/89 but failed to do so and therefore they are prohibited from again agitating the same issue. This issue concerning the pay scale of the applicants have already been decided by the Tribunal in O.A. 127/89 by order dated 7.6.95.



7. The main ground of the applicants has been countered by the respondents by saying that the duties of Mate Construction line is not same as that of Open line. The respondents have brought out that the duties defined in the Chapter B of IRWWM are applicable to the Mates, who are deployed for maintenance of Permanent Way i.e. Railway Tracks, which work the Mates in Construction Organisation are not required to do. Therefore according to the respondents the duties and responsibilities of Mates on Open Line and Construction are not same and equal, therefore the principle of equal pay for equal work cannot be invoked in this case!

8. After considering the arguments of both the sides and perusal of the records, I am of the view that the applicants have not been able to place on record any material to show that the job of Gang Mates is same, while the respondents administration has clearly brought out that the work and job of Open Line Mate is different from the job of Mate of Construction Line. In view of this I am of the opinion that the applicants have not made out any case for applying the principle of equal pay for equal work in the present case!

9. Grant of pay scale on the principles of equal pay for equal work is a job of administration and I am not inclined to interfere in this respect

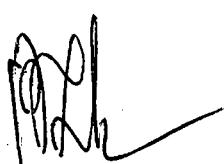
on the basis of the records which have been produced by the applicants, as there is no evidence to show that work is equal in the case of Open line Mate and Construction line Mate. In this connection it would be beneficial to keep in view the decision of the Supreme Court in the case of Union of India and Anr. V/s. P.V. Hariharan and Anr. SC SLJ 1997(1)598. In this case the Hon'ble Supreme Court has observed in para 5 as under:

" Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being mis-understood and mis-applied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will



exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

10. As far as the decision of Ahmedabad judgement in O.A. 547/88 decided on 5.2.93 is concerned the learned counsel for the respondents has argued that judgement does not lay down any general ratio and gives relief to the applicants there in. The learned counsel for the applicant has specifically brought out to my notice that Ahmedabad Bench has given relief on the basis of ' drawing adverse inference' in the absence of record as brought out in para 7. The learned counsel for the respondents also argued that the Ahmedabad Bench has not decided the question on the basis of 'equal pay for equal work principle' while deciding the case of the applicants in that O.A. Therefore, Ahmedabad Bench decision cannot be applicable for grant of relief to the applicant. I am inclined to accept the contention of the learned counsel for the respondents in as much as that Ahmedabad Bench decision is not based on the basis of equal pay for equal work and the decision of Ahmedabad Bench cannot be given general application. In para 9 of the Ahmedabad Bench judgement, the Tribunal is conscious of the fact that the job of the Open Line Mate may be different than that of



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Construction line Mate. The Tribunal has observed in para 9 reads as under:

" Before we part with this judgement, we would like to deal with the contention of the respondents raised in para 7 of the reply that the applicant No.12 and 22 can be entrusted with the work of maintenance of Permanent Way which itself is important in safety aspect also. The respondents may give such training to the applicants for this work as required."

This observation of the Ahmedabad Bench directly shows that the Tribunal is not granting the relief on the basis of equal pay for equal work and that the work of Open line Mates may be different from that of Construction line Mate.

11. It is also noted that the O.A. has been filed in 1996, while the grievance of the applicants is for the period of 1982 and 1983. The applicants have failed to bring out this grievance in other O.A. which was filed before the Bombay Bench (OA 127/89) which aspect has been clearly noted by the Tribunal in their judgement dated 7.6.95 in para 5 wherein the Tribunal has observed which reads as under:

" We are, therefore, clear that no case has been made out before us for equal pay for equal work and that the applicants would be entitled on that basis to urge that in view of the discriminatory treatment made out to them they would be entitled to the protection of Article 14 and 16 of the Constitution of India."



In para 8 the Bombay Bench has observed as under:

" We make it clear that we are not called upon in this case to decide the question regarding the applicants on the ground of equal pay for equal work entitlement, if any under Article 14 and 16 of the Constitution of India which they are at liberty to agitate if those grounds are available to them."

12. The question of delay therefore becomes important in this case. The applicants have come up in 1996 for a grievance which arose in 1982 and 1983. The applicants have not explained the reason for coming so late to prosecute their claims under the principle of 'equal pay for equal work' except saying that in terms of Ahmedabad Bench judgement they are required to be granted the pay in terms of 'equal pay for equal work'. I am therefore of the view that the application suffers from laches and delay.

13. In the result I am of the view the applicants are not entitled to the relief sought by them on merit as well as on the basis of laches and delay. The O.A. is accordingly dismissed. No order as to costs.



(P.P. Srivastava)
Member (A)