

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.532/95

DATE OF DECISION: 02.02.2001

CORAM: HON'BLE SHRI S.K.I.NAQVI, MEMBER (J)
HON'BLE SMT. SHANTA-SHASTRY, MEMBER (A)

1. Shri S.M. Yadhav, age 41
Residing at Plot No.385,
Kiran Society, Sahakar Nagar No.1,
Pune - 411 009.
 2. Shri T.J. Joy, Age 42,
Residing at C/o. National Film
Archives of India,
Pune 411 004.
 3. Shri K.K.Davis, Age 3,
Residing at C/o. P.M. Anthony,
Film Institute, Quarters Type/
Block 7, Law College Road,
Pune 411 004.
 4. Banedar Rashid Husain, aged 37,,
Residing at 43/2, Behind Konark,
Udyog Building, Opp. SNTD College.
Karve, Road, Pune 411 038.
 5. Shri B.J. Jadhav, Aged 39,
Residing at 49/383 Maharshi Nagar,
Pune 411 037.
 6. Shri Dhalait Yusuf, M. aged 43,
Residing at No.66, Ganesh Peth,
Firoz Chambers, 3rd Floor,
Pune 411 002.
 7. Shri N.S. Marwad, Aged 35,
Residing at Pankaj 18/1,
IInd Floor, Flat No.9,
Ideal Colony, Paud Road,
Pune 411 029.
 8. Shri N.S. Alhat, aged 37,
Residing at C/o. National Film
Archives of India,
Law College Road, Pune.
 9. More Dhondiram Namdeo, Age 32,
R/a: A/16, Shivaji Nagar,
Poline Line, Pune 41 005.
 10. P. Venkatesh, aged 30.
Residing at C/o. Balu Barate,
Warje Gaon, N.D.A. Road,
Pune 411 029.
- Applicants.

(Represented by Shri S.P. Saxena, Advocate)

vs

1. Union of India, through the
Secretary, Ministry of Information
and Broadcasting, Shastri Bhavan,
New Delhi 110 001.
2. The Director, National Film
Archives of India,
Law College Road, Pune 411 004.
3. The Director, Film Festival
Directorate, New Delhi. Respondents.

(Shri V.D.Vadhavkar, Advocate for Shri M.I.Sethna, Advocate)

O R D E R [ORAL]

[Per: Smt. Shanta Shashtry, Member (A)]

The Applicants 10 in number have prayed to direct the Respondents to grant them the scale of Pay of Rs.950--1500/w.e.f. 1.1.1996, on the basis of the recommendations of Respondent No.2 to Respondent No.1 justifying the above mentioned scale on the principle of 'equal pay for equal work' and the similarity of nature of duty between the Film Checker of the National Film Archive of India (NFAI) and Joiner-cum-Film Checker of the Directorate of Film Festivals under the same Ministry of Information and broadcasting.

2. The Applicants are working as Film Checkers, in the National Film Archives of India. They have joined on different dates ranging between 15.2.1977 to 1.6.1984. Throughout their career they have not received a single promotion. The post of Film Checker is a Group D post, earlier in the scale of Rs.210-270/replaced by the scale of Rs.800 -1150/- after the recommendations of the IV Pay Commission.

3. Learned Counsel for the Applicants submits that there is a post under the Ministry of Information and broadcasting in the Directorate of Film Festivals known as Film Joiner cum Checker carrying the pay scale of Rs.950-1500/-. The duties and responsibilities of the post of Film Checker in NFAI are almost similar to the duties and responsibilities of Film Joiner cum Checker under the Directorate of Film Festivals. They are,

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therefore, entitled to the same scale of pay as that of the Film Joiner cum Checker i.e. Rs.950/ to 1500/-.

4. The learned Counsel Shri S.P. Saxena submits that in the past, they had made a representation in 1991, at that time the National Film Archive of India that is the parent organisation had recommended to the Ministry to consider granting the Film Checkers the scale of Rs.950 -- 1500/-. However, the proposal was not accepted. Further, the matter came to be referred to the JCM and the JCM in their 40th meeting discussed the issue and set up a committee known as the Agarwal Committee to look into this issue of bringing Film Checkers on par with Film Joiner Cum Checker in the matter of Pay Scale. Learned Counsel for the Applicant states that the report of the Committee was silent on this particular issue, may be the issue was not considered. He is not sure about it. Thereafter when being aggrieved, a reference was made, to the Ministry, the following position was conveyed vide letter dated 17th January, 1995 "as regards upgradation of the scales of Film Checkers, Ministry of Finance has already advised all concerned to refer such proposals to the 5th Pay Commission. However, as and when the Film Checkers reached the maximum of their scale and stagnated beyond one year they could be promoted insitu in accordance with the relevant instructions. Thereafter, the recommendations of the V Pay Commission were accepted. According to the learned Counsel except for approaching 5th Pay Commission through their own Director no further action was taken. The V Pay Commission declined to look into the anomaly on the ground that the anomaly continued even before the recommendation of the IV Pay Commission. And hence only replacement of scales were given.

Thus the applicants' prayer for giving them a upgradation scale remained unsettled. Being aggrieved the applicants have now approached this Tribunal.

5. The Respondents have filed a Written Statement. Learned Counsel for the Respondents submits that it is not correct to say that the posts of film Checker in the NFAI and the Film Joiner cum Checker in the Directorate of Film Festivals are on the same footing. The post of Film Joiner cum Checker is a group C post whereas the post of Film Checker is a Group D post. According to the recruitment Rules, for the post of Film Joiner cum Checker the minimum qualification prescribed is that of SCC whereas there is no such qualification prescribed for the post of Film Checker. The Learned Counsel also tried to distinguish the duties and functions performed by the Film Checkers and the Film Joiner cum Checker. The learned Counsel pointed out that the Film Joiner cum Checkers have to maintain a Register on the condition of all Film Prints and they also have to maintain records on film checking machines and rewinding equipments. Thus, there is a difference in all these respects between these two posts. Therefore, the principle of 'equal pay for equal work' does not apply in this particular case. The learned Counsel also brings to our notice that it is not correct to say there are no promotional avenues at all for Film Checker in NFAI. In fact there is one post in a Higher Pay Scale. The authorities perhaps did not consider it necessary to have more higher Group posts and, therefore, it was confined to one post, as being justified.

6. The learned Counsel has also relied on certain case laws. viz: 1997 (SCC) L&S 929 in the case of *Garwhal Jal Sansthan vs.*

State of UP. It has been held therein that there is no similarity in duties and few similarities will not do if there is qualitative difference. The learned Counsel has also emphasised that the pay fixation is not the function of a Tribunal as has been held in several cases viz. 1997 (i) SCSLJ 598 in the matter of UOI vs. P.B. Hariharan, the apex court has held that Pay Fixation is purely for expert groups like Pay Commission etc to decide and it is not for the Tribunal to go into this matter except when there is hostile discrimination. In this particular case there is no such hostile discrimination. The learned Counsel has also relied on 1997 (i) SCSLJ 463 in the case of Shiba Kumar Dutta vs UOI. Further the learned Counsel has taken the plea that the applicants are praying for relief from 1.1.1986. The Application is totally time barred. The learned Counsel for the applicant however, is relying on the case of M.R. Gupta vs. UOI 1995 SCSLJ ^{(L85) 1273} wherein it has been held that matters of Pay, Pension etc. provide continuous cause of action and hence limitation does not apply in such cases. However, payment of arrears etc. could be restricted to a period of 3 years prior to the filing of the application. Therefore, in this particular case, limitation does not apply. Learned Counsel for the Respondents however, cites the latest judgement in the case of R.C. Sharma [1999 (2) SCSLJ 294] stating that unless there is an application for condonation of delay, the case cannot proceed on merits. Overall the applicants do not have a case according to the Respondents.

¶. Learned Counsel for the Applicant continued to however, argue that for no fault of theirs, they have been stagnating same post for years together. At least some consideration needs to be shown, no one has applied their mind properly to the case of the applicants.

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8. Learned Counsel for Respondents submits that considering that many posts in the Govt. of India did not have any promotional avenue the Govt. has introduced an insitu promotion scheme in 1990 whereby one upgradation was provided for Group D to Group C posts subject to certain conditions including stagnating in the same post for more than one year at the maximum. The applicants could have been given the benefits of the same. That apart, the Govt of India have now after the recommendations of V Pay Commission introduced the Assured Career Progression Scheme dated 9th August, 1999. According to this Scheme, all employees from Groups B, C and D will be entitled to promotions on completion of 12 years and 24 years of regular service. Since the applicants do not have any other promotional avenues, they could be promoted on the basis of this Scheme.

9. We have given careful consideration to the arguments advanced on both sides. In our considered view, we cannot accept that the posts of Film Checker in NFAI and the Film Joiner cum Film Checker in the Directorate of Film Festivals are on the same footing. There is a basic difference in the minimum qualification prescribed for the posts. The posts are in different groups viz. one is in Group D and the other is in Group C. Though broadly the duties and functions of the two posts appear to be similar that cannot be the only criteria for treating the posts on par and to give them the same Pay Scale on the basis of 'equal pay for equal work'. We do not think that this is a fit case for upgradation to the higher scale of Rs.950--1500/-. Moreover, as has been rightly pointed out by the learned Counse for the Respondents, it is not for this Tribunal to enter into issues of Pay Fixation which are to be dealt with by Expert Groups. The Applicants have also failed to go to the

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Anomalies Committee, in the past. Even if we were to over look the plea of limitation, still the case is devoid of merits. We, therefore, are unable to grant any relief in this matter. However, the applicants, may approach the concerned authorities for granting them upgradation/promotion as per the Assured Career Progression Scheme introduced recently from 1999.

10. In the result, the O.A. is dismissed. No costs.

Shanta J-

(Smt. Shanta Shastry)

Member (A)

Sae Naqvi

(S.K.I. Naqvi)

Member(J)

sj*