

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA
(CIRCUIT SITTING AT PORT BLAIR)

No. O.A. 186/AN/2015

Date of order: 29.03.2019

Present : Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri S. Appa Rao,
S/o. Late Adinarayan,
Working as Sail Maker
In the department of Tourism, A & N Administration,
Port Blair

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Grade I

Applicant

-Versus-

1. Union of India
(service through the Lt. Governor
A & N Islands,
Port Blair.)
2. The Secretary (Tourism)
3. The Director (Tourism)

.... Respondents

For the Applicant

Mr. M.K. Thakur, Counsel

For the Respondents

Mr. S.C. Misra, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:-

Aggrieved at disparity in Grade Pay between the posts of Sail Maker, Tourism vis-a-vis Sail Maker, Shipping, the applicant has approached the Tribunal for fixation of his Grade Pay at Rs. 2800/- at par with that receivable by the Sail Makers in the Directorate of Shipping Services.

2. Heard both Ld. Counsel, examined pleadings sans rejoinder and documents on record. Ld. Counsel for the applicant would cite the orders of the Tribunal in O.A. No. 113/A&N/1994 dated 25.7.1997, in support of his claim.

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3. The applicant's submissions, in brief, are that, the applicant is a permanent employee in the Department of Tourism who was appointed to the post of Sail Maker on 24.3.1993, receiving at the time of filing of the application, a monthly salary of Rs. 28,464/- including Grade Pay of Rs. 2000/-. The applicant has referred to his counterpart in the Directorate of Shipping, who, although not impleaded, was reportedly appointed on 27.4.1996, and who is drawing a monthly salary to the extent of Rs. 35,729/- with a Grade Pay of Rs. 2800/-. As the applicant is receiving a Grade Pay of only Rs. 2000/-, he had represented on 13.7.2015 to the respondent authorities, pleading for enhanced grade pay on grounds of similarity of his work and responsibilities with that of the Sail Maker of Directorate of Shipping. Given the non-response of the authorities, however, and, being aggrieved, the applicant has presently approached the Tribunal in the instant O.A.

The applicant's grounds, in support of his claim, are primarily, as follows:-

- (i) That, the duties, functions and responsibilities of the Sail Maker in the Department of Tourism and Shipping are the same.
- (ii) That, both are employees of the same Andaman & Nicobar Administration.
- (iii) The difference in Grade Pay of the applicant to the extent of Rs. 800/- is arbitrary, illegal and whimsical and that the respondents have not responded positively to his prayer dated 13.7.2015.

4. On the contrary, the respondents have argued that the applicant was engaged as a Temporary Sail Maker as per the recruitment rules notified on 28.12.1992 in which the qualification and experience prescribed for the post was "pass" in VIth standard and fair knowledge in Tailoring Work. Hence, the educational qualification and professional experience were kept at a minimum for the post to which the applicant was appointed. The amended recruitment rules for the post of Sail Maker under the Directorate of Tourism was formally notified on 18.3.2011, according to which, the educational requirements for direct

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recruitment was "pass" in Secondary school examination from a recognized board/institute, knowledge of tailoring and proficiency in trade test. A pay scale of Rs. 5200-20200/- + Grade Pay of Rs. 1800/- was notified for this post. On the other hand, in March, 2011, the recruitment rules for Sail Maker in the Directorate of Shipping was also notified in the pay scale of Rs. 5200-20200/- + Grade Pay of Rs. 1900/-. The said post was to be filled up by promotion from amongst Mazdoors in the pay scale PB-1 with Grade Pay of Rs. 1800/- with three years regular service in the grade who would also have to qualify in the Departmental trade test. The requisite mandatory qualifications were 10th Pass from a Recognized Board/Institute, certificate of Tailoring from a recognized Institute (ITI) as well as two years' experience in tailoring work as a desirable qualification.

The respondents have further clarified that the nature of work of Sail Maker in Tourism is intermittent in nature, little in volume and that, as the department has no boat, the services of the applicant are being utilized not for making of sails but for stitching of curtain, table cloth, sofa covers etc. According to the respondents, as there is clear distinction in recruitment qualifications as also in job responsibilities, the applicant cannot claim parity with the Sail Makers in the Directorate of Shipping.

5. The primary issue to be adjudicated upon in the instant application is whether the applicant, who is a Sail Maker in the Department of Tourism, can claim equal pay for equal work vis-à-vis the Sail Maker in the Directorate of Shipping.

6. At the outset, we examine the recruitment rules notified on 28.12.1992 which prevailed at the time of the applicant's appointment to the post. The post of Sail Maker, Directorate of IP & T, was classified as General Central Services Gr. 'D' Non-Gazetted (Non-Ministerial). No notifications have been furnished on the responsibilities of the Sail Maker in the said department, but the essential qualifications are noted as VIth Standard pass with fair knowledge in tailoring

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work subject to proficiency in trade test. The 2011 notification is, however, more detailed. The recruitment rules as well as duties and responsibilities of Sail Maker as per Recruitment Rules, 2011 (as annexed as R-6 to the reply) are extracted as under:-

““ THE ANDAMAN AND NICOBAR EXTRAORDINARY GAZETTE, MARCH 18, 2011

SCHEDULE-II

Recruitment rule for the post of Sail Maker, Directorate of Tourism, Andaman and Nicobar Administration, Port Blair

1.	Name of post	Sail Maker
2.	Number of post	01(one) (2011) Subject to variation depending on workload
3.	Classification	General Central Services, Group 'C' Non-Gazetted, Non-Ministerial
4.	Pay Band and Grade Pay/Pay Scale	PB-1 Rs. 5200-20200+ Grade Pay Rs. 1800
5.	Whether selection post or non-selection post	Not applicable
6.	Whether benefit of added years of service admissible under rule 30 of the CCS (Pension) Rules, 1978?	No
7.	Age limit for direct recruitment	18-33 years for male 18-38 years for female (Relaxable for Government Servants up to 5 years in accordance with the instructions/orders issued by the Central Govt. from time to time) Note: The crucial date for determining the age limit shall be the closing date for the receipt of names/applications from Employment Exchange/Candidates
8.	Educational and other qualifications required for direct recruits	Essential: (1) Must have passed Secondary School Examination (Xth Std.) from a recognized Board/Institution. (2) Knowledge of Tailoring and should qualify to proficiency trade test.
9.	Whether age and educational qualifications prescribed for direct recruitment will apply in the case of promotees?	Not applicable
10.	Period of probation, if any	02 (Two) years
11.	Method of recruitment whether by direct recruitment or by promotion, transfer and percentage of the vacancies to be filled by various methods.	100% by direct recruitment
12.	In case of recruitment whether by promotion/deputation/transfer from which promotion/deputation/transfer to be made	Not applicable
13.	If a DPC exists, what is its composition?	Group 'C' DPC (for confirmation) consisting of : 1) Director (Tourism) -Chairman 2) Dy. Director (Tourism) -Member 3) Asst. Secretary (Perl.) -Member
14.	Circumstances in which UPSC is	Not applicable

	to be consulted in making recruitment	
15.	Job Description	Attached as Annexure to Schedule

ANNEXURE TO SCHEDULE-II

Duties and Responsibilities of Sail Maker

1. He should always keep in mind that guest/tourist satisfaction is the motto.
2. He should be well behave and courteous while attending the tourist/guest.
3. He should facilitate the tourist/guest while checking in/checking out the rooms and extend other courtesy.
4. He should have basic knowledge of stitching curtain, table cloth, apron, sofa cover etc.
5. He should be able to repair the Sewing Machine when not in proper condition.
6. He should have basic knowledge of housekeeping bed making, cleaning etc. or
7. He should be ready to work in co-ordination with all department of the Guest House like Front office, Reception, Kitchen, Restaurant, Housekeeping etc.
8. He should attend to any other works as may be assigned by the superior.
9. Well behaved and courteous."

On the other hand, the recruitment rules for the post of Sail Maker in the Directorate of Shipping as annexed as R-7 to the reply of the response along with job description as notified in 2011 is detailed as below:-

"SCHEDULE-VII

RECRUITMENT RULES FOR THE POST OF SAIL MAKER IN THE ESTABLISHMENT OF DIRECTORATE OF SHIPPING SERVICES, A&N ADMINISTRATION

01	Name of post	Sail Maker
02	Number of post	08(Eight) (2011) (Subject to variation dependent on work load)
03	Classification	General Central Services, Group 'C' Non-Gazetted, Ministerial
04	Pay Band and Grade Pay/Pay Scale	Pay Band Rs. 5200-20200 plus Grade Pay Rs. 1900/-
05	Whether selection post or non-selection post	Non Selection
06	Whether benefit of added years of service admissible	Not applicable
07	Age limit for direct recruits	18-33 years for male 18-37 years for female (Relaxable for Govt. Servants up to 5 years in accordance with the instructions/orders issued by the Central Govt. from time to time) NOTE: The crucial date for determining the age limit shall be the closing date for the receipt of applications/names from candidates/ Employment Exchange, A&N Islands.
08	Educational and other qualifications required for direct recruits	Essential: (i) Pass Secondary School (Xth Std.) Examination from a recognized Board/Institution. (ii) Should possess certificate of Tailoring

		from a recognized Institute (ITI). Desirable: Two (02) years experience in the Tailoring work.
09	Whether age and educational qualification prescribed for direct recruits will apply in the case of promotes	No
10	Period of probation, if any	2 (Two) years (for direct recruit)
11	Method of recruitment whether by direct recruitment or by promotion or by deputation (ISTC) and percentage of the posts to be filled by various methods.	Promotion, failing which by direct recruitment.
12	In case of recruitment by promotion/deputation(ISTC), grade from which promotion/deputation to be made	From amongst the Mazdoors in the pay scale in PB-1 with Grade Pay of Rs. 1800 and 03 years regular service in the grade and qualify in the departmental trade test.
13	If a DPC exists what is its composition	Group 'C' DPC (for considering cases of confirmation/promotion) consisting of: 1. Director of Shipping Services - Chairman 2. Deputy Director (SS) - Member 3. Executive Engineer, Workshop Division, APWD - Member 4. Assistant Marine Engineer - Member
14	Circumstances in which UPSC is to be consulted in making recruitment	Not applicable
15	Job Description	Attached as Annexure-VII to Schedule

Annexure-VII

Job Description to the post of Sail Maker

1. To attend all the jobs in the Sail Maker Shop as per daily allocations.
2. To attend all the stitching (Sail Maker) job of various vessels and dockyard section as per norms and procedure.
3. All other jobs as and when allocated by superiors."

From the above, the following is inferred:-

- (i) The educational and other essential qualifications required for direct recruits aspiring to be Sail Makers in the Directorate of Shipping are more stringent than that of the Sail Makers in the Department of Tourism as because those aspiring for the post of Sail Maker in the Directorate of Shipping should, in addition to passing out at Secondary School level, possess a certificate of tailoring from recognized Institute (ITI) with a desirable qualification of two years experience in tailoring work.

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- (ii) For those aspiring for the post of Sail Maker through promotion in the Directorate of Shipping, the feeder cadre would be from Mazdoors in the pay scale in PB-1 with Grade Pay of Rs. 1800/- with three years regular service in the grade who should qualify in the departmental trade test.

Undisputedly, those with Grade Pay of Rs. 1800/- will serve as the feeder cadre to the post of Sail Maker in Directorate of Shipping which has been allowed the Pay Band of Rs. 5200-20200/- with Grade Pay of Rs. 1900/-.

- (iii) It is also clear that there is a substantial difference in the nature and quality of work that has to be performed in the Directorate of Shipping vis-a-vis the Tourism. A Sail Maker in the Directorate of Shipping has to perform various jobs as per norms and procedures. A&N Administration, being formed of Islands over the Bay of Bengal and Indian Ocean, would obviously witness substantial traffic in the form of shipping vessels. Logically, the job of the Sail Maker in various vessels and dockyard section would be much more demanding than that in the Department of Tourism where the job of the Sail Maker would be confined to basic knowledge of stitching curtains, table cloth, apron, sofa cover etc.

Hence, both in terms of academic and essential qualifications as well as job responsibilities, the requisites of the post of Sail Maker in the Directorate of Shipping are much more stringent and demanding than that of a job of a Sail Maker in the Department of Tourism.

Legally speaking "Equal pay for equal work" means that persons doing identical work under the same employer are not to be treated differently in relation to their pay and assumes the character of an enforceable Constitutional right. In this instant matter, it is factually established that the nature and quality of

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jobs of Sail Maker in Tourism Department and Sail Maker in Directorate of Shipping are not identical.

While referring to *Kishori Mohanlal Bakshi v. Union of India*, AIR 1962 SC 1139, the three Judges' Bench in *Randhir Singh v. Union of India*, AIR 1982 SC 879 held as follows:-

"It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Art. 14 if sought to be applied to them."

In the instant matter, the post of Sail Maker, Shipping, was consciously accorded a higher grade pay and those with Grade Pay of Rs. 1800/- was to serve as a feeder cadre to such higher grade. Hence, the classification as provided in the Recruitment Rules of Directorate of Shipping meets the test in *Randhir Singh (supra)*.

In *V. Markendeya v. State of A.P.*, AIR 1989 SC 1308, it was held that the principle of equal pay for equal work was inapplicable wherein classification was based on educational qualification.

In *Garhwal Jal Sansthan Karmachari Union v. State of UP*, (1997) 4 SCC 24, it was held that the principle does not apply where there was a difference in duties and functions.

Hon'ble Apex Court observed in *Inder Singh v. Vyas Muni Mishra*, 1987 (Suppl.) SCC 257 that the principle will not apply when two groups of persons are not performing the same kind of work and, as held in *State of UP v. J.P. Chaurasia*, (1989) 1 SCC 121, if there is difference in the quality of work performed.

In *Union of India v. Tarit Ranjan Das*, (2003) 11 SCC 658, the Hon'ble Supreme Court ruled that equal pay cannot be claimed merely because of same or similar designation in two separate services.

In *Federation of All India Customs & Central Excise Stenographers v. Union of India*, AIR 1988 SC 1291 the Hon'ble Court held as follows:-

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"....The problem about equal pay cannot always be translated into a mathematical formula. It has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived at mala fide either in law or in fact."

The burden to establish the right to equal pay is on the person claiming the same and, as held in **State of Punjab v. Surjit Singh, 2009 (9) SCC 514**, for the applicability of the doctrine, the Court will insist on strict pleadings and proof of relevant factors including the mode and manner of selection for entry into service.

In the instant matter, apart from the assertion that the applicant possess tailoring skills and that he is engaged by the same A&N Administration, the applicant has not been able to prove his right to equal pay based on his pleadings or in the proof of relevant factors. Neither has it has been established that the classification are irrational or have been framed mala fide.

Ld. Counsel for the applicant has relied on Tribunal's orders dated 25.7.97 in **O.A. No. 113/A&N/1994 (Public Works Department Mazdoor Union v. Union of India & ors.)** in which the Tribunal, while allowing the Cook-cum-Bearers in Guest Houses/Circuit Houses of the A&N Administration, the same scale as enjoyed by the Cooks of Raj Niwas and Secretariat, found that both in terms of essential qualifications as well as functional responsibilities, the parameters laid down in the case of Cook-cum-Bearers in Guest Houses/Circuit Houses of the Administration were no less stringent than that of the Cook-cum-Bearers of Raj Niwas/Secretariat. Moreover, the duties of the former being more onerous and additional in nature, the principle was made applicable to the Cooks of the Guest Houses/Circuit Houses.

In the instant matter, it has been factually established that the essential qualifications in the Directorate of Shipping are more rigorous, the duties are more demanding and the quality of duties differ from the duties of Sail Maker in Tourism.

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Further, a reasonable classification has been made between the feeder grade and the grade accorded to the post of Sail Maker, Shipping thereby satisfying the ratio in *Randhir Singh (supra)*.

7. Hence, considering the entire conspectus, both from points of facts or law, we feel that the applicant has not been able to satisfy his claim for equal pay vis-à-vis that of a Sail Maker in the Directorate of Shipping.

8. Accordingly, the O.A. is dismissed on merit. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

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