

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.2147/2003

New Delhi, this the 16th day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN  
HON'BLE SHRI R.K.UPADHYAYA, MEMBER (A)

1. The Bailiffs (Amins) Association  
through its President  
Shri D.R.Arya  
Office Room No.6  
Old Civil Supply Building  
Tis Hazari Courts Premises  
Delhi - 54.
2. Shri Ashok Kumar Saini  
s/o Late Shri Raghuvir Singh  
r/o 1764/130, Tri Nagar  
Delhi - 110 035. ... Applicants

(By Advocate: Sh. Naresh Kaushik)

Versus

1. Goverment of N.C.T., Delhi  
through Chief Secretary  
New Secretariat  
Player Bhawan (ITO)  
New Delhi - 110 001.
2. The Divisional Commissioner/  
Secretary (Revenue)  
Delhi Administration  
5-Sham Nath Marg  
Delhi - 110 054.
3. The Lt. Governor  
Govt. of N.C.T.  
Raj Niwas Marg  
Delhi.
4. The Secretary (Finance)  
Delhi Administration  
Govt. of NCT, Delhi  
Indraprastha Secretariat  
Player Bhawan (ITO)  
New Delhi - 110 001. ... Respondents

(By Advocate: Sh. Rishi Prakash)

O R D E R (Oral)

Justice V.S. Aggarwal:-

Applicant No.1 is the Bailiffs (Amins) Association. Applicants are working under the Land Revenue Department of Delhi Administration. The Bailiffs are being placed under the category of

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Class-IV employees. By virtue of the present application, they seek a direction to respondents to consider their upgradation to the post of Bailiffs under the Delhi Administration from category of Class-IV to Class-III and to direct the respondents to consider the availability of promotional avenues to the Bailiffs of their upgradation from Class-IV to Class-III and grant them scale of Rs.5500-9000 on principle of 'equal pay for equal work'.

2. Some of the relevant facts are that according to the applicants, they are discharging duties comparable to SI of Police Department and Inspector under Land Revenue Department. The Bailiffs are entrusted with the work of receiving the payment of revenue and further deposit the same in the Government Treasury as provided under Rule 67 of Delhi Land Reforms Act. They are also entrusted with task of taking execution of warrant of attachment, execution of warrant of arrest, etc. They have also been assigned the duty of completing certain formalities regarding collection of land revenue under Delhi Land Revenue Rules. They are maintaining a diary and making entries in the relevant registers.

3. It is alleged that in 1931, the pay scale of Bailiff (Amins) was Rs.40-1-50-2-60 and the scale of Patwari was Rs.35-1-50. The scale of Bailiff was higher than the scale of Patwari. Later on, the scales of both the posts were made equivalent, i.e., Rs.40-1-50-2-60. In the year 1952, the scale of the Bailiffs was downgraded to those of the Patwaries.

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The Bailiffs were in the scale of Rs.80-1-85-2-95-3-110 and Patwaries were placed in the scale of Rs.85-2-95-110-2-120. Even in Uttar Pradesh, it is stated that Amin/Bailiffs are Class-III employees. The grievance of the applicants is that though they made representations, the same have not been disposed of. Therefore, the above said reliefs are being claimed.

4. Respondents have contested the application. They plead that the applicants are performing their duties strictly in accordance with the recruitment rules and are only performing those duties. It is denied that there is any discrimination or that the applicants can press into service the principle of 'equal pay for equal work'.

5. On behalf of the applicants, strong reliance was being placed on the decision of the Delhi High Court in the case of BAILIFFS AND PROCESS SERVERS ASSOCIATION (REGD) & ORS., v. DELHI ADMINISTRATION, DELHI & ORS., Civil Writ No.3060/89, decided on 4.4.2002. A perusal of the cited case reveals that their grievance was that their pay scale was lower than the Class-IV employees of Delhi High Court. The pay scale of Process Servers had been revised and same scale was applicable to the post of Peons, Farashes and Sweepers, etc.. They even contended that the minimum qualifications required for holding the post of Process Servers are higher than the unskilled labourers. Keeping in view of these facts, the Delhi High Court held:

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"It has not been and could not have been disputed that the job of the petitioners are more onerous than the bailiffs of a family court. In that view of the matter, in our opinion, the doctrine of equal pay for equal work must be held to be applicable. From a perusal of the notification dated 9th April 1992 issued in the Delhi Gazette, it appears that therein the scale of pay of process server has been fixed as 950-1500. There is absolutely no reason as to why, having regard to the principles adumbrated in Article 39(d) read with Article 14 of the Constitution of India, the doctrine of equal pay for equal work would not apply in the case of the petitioners.

Mr. Shali, learned counsel appearing on behalf of Delhi Administration, however, would submit that process servers in the family courts have not yet been appointed. This may be so but the very fact that in terms of Rule 15 of the Rules framed under the Family Courts Act, the scale of pay of the Process Servers had been fixed, we see no reason why the petitioners cannot be directed to be placed on the same scale of pay w.e.f. the date of the said notification i.e. 14th April 1992 and consequent revision in the scale of pay in terms of the recommendations of the Fifth Central Pay Commission."

As is apparent, the facts of the cited case are distinguishable. Their educational qualifications were higher than the unskilled persons and keeping in view the fact that their scales were lower than the Class-IV employees of the Delhi High Court, the relief had been granted. This is not so in the present case. Therefore, the applicants cannot refer the cited decision to their advantage.

6. Reliance was further being placed on the fact that in Uttar Pradesh, the Bailiffs(Amins) are Class-III posts and they contend that this is apparent from the letter dated 24.10.1981 on the file. We have already referred above the duties of the Bailiffs who

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are the applicants in the present application. In Uttar Pradesh, the duties are apparent from the above said letter which indicates that besides collection of revenue and maintenance of registers, they have to maintain the jamabandi in ZA Form 62. Maintenance of jamabadi which is a part of record of rights, is an important document. This is not the duty of the applicants and, therefore, when they are working in different conditions, they cannot take advantage of the same.

7. In face of what we have recorded above, the relief that applicants are entitled to the benefits of Class-III employees on basis of the aforesaid, cannot be accepted. As regards direction to consider the availability of promotional avenues, such a relief for upgradation from Class IV to Class III, keeping in view the preceding conclusions cannot be granted. But there is no bar that respondents may consider any benefit that can be granted to the applicants.

8. It was urged that in any case the applicants are discharging same duties as Bailiffs in Uttar Pradesh and certain Bailiffs who were petitioners in Delhi High Court referred to above. Therefore, principle of 'equal pay for equal work' will come into play.

9. The principle of 'equal pay for equal work' has been considered in depth in the case of RANDHIR SINGH v. UNION OF INDIA AND OTHERS, AIR 1982

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SC 879. The Supreme Court held that it was not a fundamental right but a constitutional goal. In paragraph 7, the Supreme Court held:

"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."

10. The same principle had been reiterated by the Supreme Court in the case of STATE OF U.P. AND OTHERS, v. RAMASHYRAYA YADAV AND ANOTHER. 1996 SCC (L&S) 714. The Supreme Court held that the principle of 'equal pay for equal work' can be attracted when two sets of employees similarly situated and discharging similar functions get different scales of pay and not otherwise. The findings of the Supreme Court in this regard are:

"5. .... The principle of equal pay for equal work is attracted only when two sets of employees are similarly situated and are discharging similar functions but yet are getting different scales of pay. In the case in hand as has been stated earlier the posts of Investigators-cum-Computer had been created purely on a temporary basis. The essential qualification for the said post was Intermediate whereas the essential qualification for regular Investigator-cum-Computer is Bachelor's degree with Statistics or Mathematical Statistics or Mathematics. The knowledge of Hindi written in Devanagari script was an essential qualification for regular Investigator-cum-Computer, which was not prescribed for the post held by the respondents. The mode of recruitment to the posts held by the respondents was

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through Departmental Selection Committee whereas the mode of recruitment for regular Investigator-cum-Computer is through Public Service Commission Uttar Pradesh, Allahabad/U.P., or U.P. Subordinate Services Selection Board, Lucknow. The nature of duties for the respondents was to collect the data for livestock number and livestock products from 15 districts of the State only whereas the duties of the regular Investigator-cum-Computer was (1) to collect data from districts, livestock farms and other livestock institutions (2) to complete, tabulate, to assist in the scrutiny and analysis of the tabulated data and (3) to supervise the statistical work of the other departmental field staff. In the aforesaid premises it is difficult for us to hold that the principle of "equal pay for equal work" can be attracted. In our considered opinion the High Court was wholly in error in directing the State to pay the respondents the same scale of pay as is paid to the regular Investigator-cum-Computer."

11. In fact, the Supreme Court in the case of

UNION OF INDIA AND ANOTHER v. P.V. HARIHARAN AND ANOTHER, 1997 (1) SCC (L&S) 838 held that there should be no judicial interference with pay scales fixed by the Government on the recommendation of the expert body, like, Pay Commission, and this Tribunal/Court can interfere in such matters only when a clear-cut case of hostile discrimination is made out. The findings of the Supreme Court are:

"5. 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,

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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 misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter.

12. In fact, in the subsequent decision in the case of STATE OF HARYANA AND ANOTHER v. HARYANA CIVIL SECRETARIAT PERSONAL STAFF ASSOCIATION JT 2002 (5) SC 189, the Supreme Court advised to restrain in interfering in matters in which Government has fixed the pay scales. The findings of the Supreme Court are:

"8. From the discussions in the impugned judgment it is clear to us that the High Court has ignored certain settled principles of law for determination of the claim on parity of pay scale by a section of government employees. While making copious reference to the principle of equal pay for equal work and equality in the matter of pay, the High Court overlooked the position that the parity sought by the petitioner in the case was with employees having only the same designation under the central government. Such comparison by a section of employees of state government with employees of central government based merely on designation of the posts was misconceived. The High Court also fell into error in assuming that the averment regarding similarity of duties and responsibilities made in the writ petition was unrebuted. The appellants in their counter affidavit have taken the specific stand that no comparison between the two sections of employees is possible since the qualifications prescribed for the P.A.s. in the central secretariat are different from the P.A.s in the state civil secretariat. Even assuming that there was no specific rebuttal of the averment in the writ petition that could not form the basis for grant of parity of scale of

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pay as claimed by the respondent. The High Court has not made any comparison of the nature of duties and responsibilities, the qualifications for recruitment to the posts of P.A.s in the state civil secretariat with those of P.A.s of the central secretariat."

13. From the aforesaid, the following principles which are relevant for purposes of the present application are that principle of 'equal pay for equal work' is not a fundamental right but is a constitutional goal. Before the said principle can be made available, there must be similarity of duties. However, if there is a difference in the educational qualifications for the posts, a different pay scale can be prescribed and ordinarily, the Tribunal must exercise due restraint in interfering in the pay scales. Only in the case of hostile discrimination, the interference would be justified. Normally, this should be left with the expert body like Pay Commission.

14. In the present case before us, some similarity was being drawn pertaining to the posts of Patwari. However, it was not disputed and it was shown that educational qualifications to be recruited as a Patwari is Matriculation and for being a Bailiff (Amin), it is 8th pass. Therefore, the applicants cannot draw the advantage of the contention that earlier their scales were at par with that of Patwari.

15. In the preceding paragraphs, we have already held that so far as the Uttar Pradesh is concerned, duties of the Bailiffs are different. They

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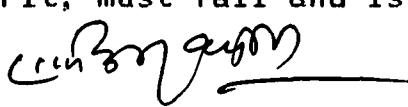
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are not absolutely identical. Merely because if the Services Department has recommended the case of the applicants, will not confer any right on them.

16. As already referred to above, ordinarily it is for the expert bodies, like, Pay Commission, etc. to go into this controversy. Once they have found or otherwise the Government found that the applicants are not entitled to the higher pay scales, we find that there is no scope for interference. The applicants cannot take advantage of any of the principle which we have referred to above.

17. No other argument was raised.

18. For these reasons, the OA being without merit, must fail and is accordingly dismissed.

  
(R.K. Upadhyaya)

Member (A)

  
(V.S. Aggarwal)  
Chairman

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