



2025:DHC:691-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7992/2017

DR. B.K. TIWARI ADVISER (NUTRITION)Petitioner
Through: Mr. V.S.R. Krishna and Mr. V.
Shashank Kumar, Advs.

versus

UNION OF INDIA & ANRRespondents
Through: Mr. Vivekanand Mishra, SPC
for UOI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **03.02.2025**

C. HARI SHANKAR, J.

The issue

1. The petitioner, who was occupying the post of Advisor (Nutrition) in the Directorate General of Health Services, Ministry of Health and Family Welfare, sought parity of pay with the posts of Advisor (Ayurveda) and Advisor (Homeopathy). The Central Administrative Tribunal¹ has, by judgment dated 7 October 2016 render in OA 3216/2011, rejected his claim.

2. The petitioner is before us, challenging the said decision.

¹ "the Tribunal", hereinafter



3. As such, the only issue in consideration is whether the post of Advisor (Nutrition) is entitled to parity of pay with the post of Advisor (Ayurveda) and Advisor (Homeopathy).
4. We have heard Mr. V. Shashank Kumar, learned Counsel for the petitioner, at length.
5. Before advertng to Mr. Shashank Kumar's submissions, we may note that the issue of whether the post of Advisor (Nutrition) was entitled to pay parity with the posts of Advisor (Ayurveda) and Advisor (Homeopathy), was addressed by the 5th Central Pay Commission², which returned a recommendation against the petitioner and recommended that the post of Advisor (Nutrition) be placed in the scale of ₹ 4500-5700, of which the replacement scale was ₹ 14300-18300/-. There is no dispute that this scale has been paid to the petitioner.
6. Mr. V. Shashank Kumar's first submission is predicated on the following noting, entered by the Deputy Directorate General (P) on the file:

“The matter relates to upgrade the pay scale of Advisor (Nutrition) under this Directorate in respect of his representation to the 5th Pay Commission which has asked our comments for the same. The Department of Health has also requested our comments so that the same may be sent to the 5th Pay Commission.

In this connection, it may be mentioned that Adviser (Nutrition) is the Programme Officer of National Iodine Deficiency, Disorders Control Programme (NIDDCP) and a new Programme entitled National Programme for Miconutrient Malnutrition is also likely to start very soon under him. This is an important and sensitive post with very high technical

² “5th CPC”, hereinafter



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responsibilities and the facts made in the representation seem to be true and requires appropriate action for the same. It will be more appropriate to recommend to the 5th Pay Commission to upgrade the pay scale of the post of Adviser (Nutrition) in the Senior Administrative Grade (SAG) equivalent to Adviser (Nutrition) in the Senior Administrative Grade (SAG) equivalent to Adviser (Homeopathy)/Adviser(Ayurveda) of the Ministry of Health and F.W. or in the scale of Advisers in the Ministry of Science and Technology/Planning Commission etc.

In view of the above, D.G. may kindly see before it is sent to the Department of Health for further action.

Submitted for kind approval of D.G.

Sd/-
2/2/93
DR. A.K.Kundu
DDG(P)”

7. It is settled law that a file noting confers no right to a party. The Supreme Court has pronounced on this aspect in *Bachhittar Singh v State of Punjab*³, *State of Punjab v Aman Singh Harika*⁴, *Nareshbhai Bhagubhai v UOI*⁵, *Sethi Auto Service Station v DDA*⁶, *Shanti Sports Club v UOI*⁷, and a catena of other judgments. Rights ensure, in favour of the citizen, only following communication of the decision to her, or him.

8. Besides, the aforesaid file noting was a noting which was entered *before* the matter was referred to the 5th CPC. Thereafter, the 5th CPC has considered the aspect and has not chosen to recommend pay parity of the post of Advisor (Nutrition) with the posts of Advisor (Ayurveda) and Advisor (Homeopathy).

³ AIR 1963 SC 395

⁴ AIR 1966 SC 1313

⁵ (2019) 15 SCC 1

⁶ (2009) 1 SCC 180

⁷ (2009) 15 SCC 705



9. The Supreme Court has, in case after case, held that the arena of pay fixation is one into which courts should rarely, if at all, venture. Such matters, the Supreme Court has repeatedly emphasised, fall within the province of expert bodies such as the Pay Commission.⁸ As such, once the Pay Commission has examined the matter and has not given a recommendation in the petitioner's favour, the scope for judicial review by a court is all but foreclosed.

10. We may refer, in this context, to the judgment in *UOI v P V Hariharan* (*supra*).

11. Mr. V. Shashank Kumar places reliance on the judgment of the Supreme Court in *UOI v Rajesh Kumar Gond*⁹. As judgement is short, we may reproduce in its entirety, thus:

“1. Delay condoned. Heard Mr. P.P. Malhotra, learned Additional Solicitor General in support of this special leave petition and Mr. Subodh Kr. Pathak, learned counsel appearing for the respondent.

2. This special leave petition seeks to challenge the judgment and order dated 9.7.2008 passed by the High Court of Calcutta in Writ Petition No.632 of 2007 which confirmed the judgment dated 9.11.2006 passed by the Central Administrative Tribunal, Calcutta Bench in O.A. No.939 of 2004.

3. The respondent is a Junior Hindi Translator working in the office of Director General of Commercial Intelligence & Statistics under the Commerce Ministry and he sought parity of pay with the Junior Translators who were working in the Central Secretariat Official Language Service (CSOLS). The Home Ministry had issued Office Memorandum dated 9.2.2003, upgrading the pay-scales of Junior Hindi Translators from Rs.5000-1050-8000 to Rs.5500-175-9000, which were made applicable from 11.2.2003. The respondent sought the same pay-scale but it was denied to him. It is, therefore, that he filed an application in the Central

⁸ *UOI v P.V. Hariharan*, (1997) 3 SCC 568 and *UOI v M.V. Mohanan Nair*, (2020) 5 SCC 421

⁹ (2014) 13 SCC 588



Administrative Tribunal on the basis of 'equal pay for equal work'.

4. The application filed by the respondent was opposed by the petitioners by filing a counter, wherein amongst other things, in Para 9 they stated that the Fifth Central Pay Commission had recommended that the pay-scales of Junior Hindi Translators for the Central Secretariat (CSOLS) may be applied to all subordinate offices subject to their functional requirement. However, no material whatsoever was placed before the Tribunal to show as to how the functional requirement of the concerned job in the Commerce Ministry was different from that in the Central Secretariat.

5. Both the posts required the work of translation to be done and, therefore, the Tribunal came to the conclusion that there was no reason to deny parity in pay. The Tribunal relied upon the judgment of a Bench of three Judges of this Court in **Randhir Singh v Union of India and Ors**¹⁰, which is a judgment granting equal pay to the drivers in Delhi Police Force as available to those in the Central Government and Delhi Administration.

6. The petitioners herein challenged the order of the Tribunal by approaching the Calcutta High Court which dismissed the writ petition and therefore, this special leave petition.

7. Mr. Malhotra, learned Additional Solicitor General appearing for the Union of India submitted that the two posts cannot be equated but having noted that when no material was placed before the Tribunal about the functional distinction, in our view, the order of the Tribunal could not be faulted. The High Court was, therefore, right in dismissing the writ petition.

8. Before we conclude, we may profitably refer to the observations of Chinnappa Reddy, J., in para 8 of the judgment in **Randhir Singh** (*supra*) which reads as follows:

“8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional right. Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a directive principle of State policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the

¹⁰ (1982) 1 SCC 618



equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay."

9. This special leave petition is, therefore, dismissed."

12. *Rajesh Kumar Gond*, in our view, is clearly distinguishable on facts, as the Court was, in that case, concerned with whether two posts of Junior Translator in two different departments could command different scales of pay. It was in that context that the Supreme Court held that the respondent was required to demonstrate that persons holding the post of Junior Translator in two different departments were performing dissimilar duties.

13. In the present case, no such issue arises. The petitioner is occupying the post of Advisor (Nutrition) whereas the posts with which the petitioner seeks parity are the posts of Advisor (Homeopathy) and Advisor (Ayurveda). As such, the posts are themselves different, so that the case cannot be decided on the basis of the judgment in ***Rajesh Kumar Gond***.

14. Besides, it is an admitted position that the qualifications for the post of Advisor (Nutrition) and for the posts of Advisor (Homeopathy) and Advisor (Ayurveda) in the relevant Recruitment Rules are different. This may be demonstrated in a tabular format thus:



Advisor (Nutrition)	Advisor (Homoeopathy)	Advisor (Ayurveda)
<p>(i) Doctorate degree in Bio-Chemistry/ Nutrition or MD in Bio-chemistry, of a recognized University or equivalent.</p> <p>(ii) Research experience in the field of Biochemistry/ Nutrition as evidenced by published papers.</p> <p>(iii) 10 years' research/ teaching/developmental experience including some administrative experience.</p>	<p>(i) Degree in Homoeopathy of a Recognised University Statutory State Board/ Council of equivalent recognised under the Homoeopathy Central Council Act, 1973 (59 of 1973).</p> <p>(ii) Enrolment on a Central Register of Homoeopathy or a State Register of Homoeopathy</p> <p>(iii) Enrolment on the Central Register of Indian Medicine or a State Register of Indian Medicine and</p> <p>(iv) 15 years' experience in the profession. The departmental officers in the feeder category who are in the direct line of promotion shall not be eligible for consideration for appointment on deputation. Similarly. deputationists shall not be eligible for consideration for appointment by promotion (Period of deputation/ contract) including period of deputation/contract in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/ department of the central Government shall not exceed 5 years. The maximum age limit for appointment by transfer</p>	<p>(i) A degree in Ayurveda of a recognised University/ Statutory State Board/ Council/ Faculty of Indian Medicine or equivalent recognised under the Indian Medicine Central Council Act, 1970 (48 of 1970)</p>



	on deputation including short-term contract) shall be not exceeding 56 years as on the closing date of receipt of applications.	
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It is not for us to compare the relevant qualifications with each other. Suffice it to state that, the qualifications are distinct and different. This, therefore, would also militate against any claim for pay parity.

15. Besides, all these factors were obviously within the knowledge of the 5th CPC when it made its recommendations. Inasmuch as the CPC did not find it advisable to grant pay parity to the post of Advisor (Nutrition) with the posts of Advisor (Ayurveda) and Advisor (Homeopathy), the petitioner cannot claim such parity before a court. It is well settled principle that a Court cannot sit in judicial review, much less in appeal, over the decision of the Pay Commission.

16. The entire law regarding pay parity stands revisited by the Supreme Court in its judgment in *State of Bihar v Bihar Secondary Teachers Struggle Committee*¹¹, from which one need only reproduce the following paragraphs:

“96. Analysis of the decisions referred to above shows that this Court has accepted the following limitations or qualifications to the applicability of the doctrine of “equal pay for equal work”:

96.1. The doctrine of “equal pay for equal work” is not an abstract doctrine.

96.2. The principle of “equal pay for equal work” has no mechanical application in every case.

¹¹ (2019) 18 SCC 301



96.3. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference.

96.4. The application of the principle of “equal pay for equal work” requires consideration of various dimensions of a given job.

96.5. Thus, normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere.

96.6. Granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.

96.7. Equation of posts and salary is a complex matter which should be left to an expert body.

96.8. Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.

96.9. Before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment.

96.10. In a given case, mode of selection may be considered as one of the factors which may make a difference.

97. The latest decision on which heavy reliance was placed on behalf of Niyojit Teachers is the one rendered by a Bench of two Judges in *State of Punjab v Jagjit Singh*¹². The issues that arose for consideration were set out in para 5 as under:

“5. The issue which arises for our consideration is: whether temporarily engaged employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay scale, along with dearness allowance (as revised from time to time) on account of their performing the same duties which are discharged by those engaged on regular basis, against sanctioned posts? The Full Bench (*Avtar Singh v State of Punjab*)¹³ of the High Court, while adjudicating upon the above controversy had concluded, that such like temporary employees were not entitled to the minimum of the regular

¹² (2017) 1 SCC 148

¹³ 2011 SCC OnLine P&H 15326



pay scale, merely for reason, that the activities carried on by daily wagers and the regular employees were similar. However, it carved out two exceptions, and extended the minimum of the regular pay to such employees. The exceptions recorded by the Full Bench of the High Court in the impugned judgment are extracted hereunder:

‘(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.

(2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularisation, if any, may have to be considered separately in terms of legally permissible scheme.

(3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.’”

98. While considering the aforesaid issue this Court had noted all the decisions on the point of pay parity from **Randhir Singh v Union of India** and then in para 42 arrived at conclusions. The limitations or qualifications to the application of doctrine of “equal pay for equal work” were also considered in para 42 and from para 43 onwards, claim for pay parity raised by temporary employees (differently designated as work-charge, daily-wage, casual, ad hoc, contractual and the like) was also considered. After discussion on the point, the matter was concluded thus: (**Jagjit Singh case**)

“57. There is no room for any doubt that the principle of “equal pay for equal work” has emerged from an



interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of “equal pay for equal work” has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.”

99. The qualifications to the applicability of the doctrine of “equal pay for equal work” which have long been recognised and acknowledged in the decisions referred to above are well established. The decision in **Jagjit Singh** again reiterated some of those qualifications. These limitations or qualifications have not been diluted but stand reinforced.

102. We must also consider observations of this Court in para 12 in its decision in **Finance Deptt. v W.B. Registration Service Assn¹⁴**, which bring out how a “pay structure” is evolved. The relevant portion of the said paragraph was:

“12. ... Ordinarily a pay structure is evolved keeping in mind several factors *e.g.* (i) *method of recruitment*, (ii) *level at which recruitment is made*, (iii) *the hierarchy of service in a given cadre*, (iv) *minimum educational/technical qualifications required*, (v) *avenues of promotion*, (vi) *the nature of duties and responsibilities*, (vii) *the horizontal and vertical relativities with similar jobs*, (viii) *public dealings*, (ix) *satisfaction level*, (x) *employer's capacity to pay*, etc. We have referred to these matters in some detail only to emphasise that *several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc.* Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well.”

¹⁴ 1993 SCC (L&S) 157



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17. Given

- (i) the myriad factors which govern fixation of pay, as enumerated in *W.B. Registration Service Association*,
- (ii) the fact that the posts with which the petitioner was claiming parity are different posts, so that there cannot be any presumption that the nature of duties performed by the incumbents of such posts were the same as those performed by the incumbents of the post of Advisor (Nutrition),
- (iii) the fact that qualifications for the posts were different from those of Advisor (Nutrition) and
- (iv) the fact that the 5th CPC had specifically considered the petitioner's claim for pay parity and negated it,

we regret that we cannot come to the aid of the petitioner. The Tribunal is clearly correct in rejecting the petitioner's prayer for pay parity.

18. The writ petition is accordingly dismissed. No costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 3, 2025

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Click here to check corrigendum, if any