



CSAT APL/28

IN THE COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL

IN THE MATTER OF:

KUMAR CHAND DOGRA

Applicant

and

THE COMMONWEALTH SECRETARIAT

Respondent

Before the Tribunal constituted by

**Mr Christopher Jeans QC, President; Mr Chelva Rajah SC, member and Justice
Sandra Mason QC, member.**

JUDGMENT

Introduction

1. Mr. Kumer Chand Dogra brings a clear and simple complaint to the Tribunal.
2. He was the Facilities Officer at the Commonwealth Youth Programme (“CYP”) Asia Centre. He was graded G4 and paid accordingly.
3. He contends that he should have been graded and paid at the higher level of G8.
4. He says that Mr Robert Musukwa performed the corresponding job at the Africa Centre. Mr Musukwa was graded G8.
5. Mr Dogra says there is no good reason for grading and paying him lower than Mr Musukwa. He says this was unjust and discriminatory.
6. He pursued internal complaints about the matter without success.
7. Mr Dogra is not legally represented. We are grateful to him for the clarity with which he puts his case.

Brief history

8. Until the end of February 2014 the Respondent operated four CYP centres: one in the Pacific Region, one in the Caribbean, one in Africa and the Asia Centre at Chandigarh, India. We understand that all were closed at the end of February 2014.
9. Mr Dogra had given long and loyal service. His employment began in October 1983 and continued until his redundancy on the closure of the Asia Centre in February 2014. A performance appraisal attached as Annex C to the Reply confirms that he was regarded as a sincere, hardworking and punctual member of staff who performed his duties “very well”.

10. Following a review in 2005 new terms and conditions of service ("TACOS") were issued for CYP staff. From 1st January 2007 Mr Dogra served as Facilities Officer pursuant to new TACOS. He was graded and paid at level G4.
11. Meanwhile Mr Robert Musukwa held the role of Conference and Utilities officer at the CYP Africa Centre and was graded and paid at the higher level G8. To what extent the jobs were similar or different we consider below.
12. In 2012 a job evaluation process was conducted for all the regional CYP centres. The respective grades of Mr Dogra and Mr Musukwa were confirmed.
13. Mr Dogra regarded the jobs as sufficiently similar to pursue internal complaints about being graded lower. By virtue of the Statute which governs the Tribunal it was necessary for him to pursue internal remedies before he could bring his application to the Tribunal. We note that he pursued the matter to the level of Secretary General. It was entirely appropriate that he refrained from starting proceedings until after he had received the Secretary General's response. That response came in an email of 23rd May 2015, in which the Secretary General set out his conclusion that the grading and salary paid to Mr Dogra were appropriate.

Analysis

14. In international administrative law an employer enjoys a wide measure of discretion in adopting and applying internal grading schemes and in applying pay rates to grades. The Tribunal has limited jurisdiction to intervene: see the judgments in Ayyangar ILOAT Judgment No.529 and of this Tribunal in Bandara v Commonwealth Secretariat CSAT APL/22 and Sunder Singh v Commonwealth Secretariat CSAT APL/27. The latter is issued contemporaneously with this judgment.
15. In the present case however, we think that, quite apart from the discretion enjoyed by the Secretariat, it is reasonably clear that the duties pertaining to Mr Musukwa's job were of a discernibly higher level than those pertaining to Mr Dogra's. In this respect we have the benefit not only of the respective pleadings but of the job descriptions pertaining to the two jobs.
16. Mr Dogra produces his job description as Annex A to his Reply. It shows that the core functions involve day to day responsibility for a wide range of matters which can be

summarised as building maintenance complaints, guests records, conference hall bookings, payment of utility bills, ensuring cleanliness of the campus (“through three cleaners”), maintaining records of linen and other assets, scheduling staff reporting , ensuring the wearing of uniforms by relevant staff and their due performance, producing a purchase plan for essential items and washing of linen, ensuring “hostlers” follow procedures, conducting customer satisfaction survey and certain responsibilities in relation to water coolers , fire extinguishers and air conditioning.

17. The job is shown as reporting to the Programme Manager (though the Answer states that he reported to the Finance and Development Officer.) Those “under supervision” are listed as two messengers, four cleaners a part-time electrician and a part-time plumber. There is no job summary but overall “responsibilities” are listed as threefold: maintenance of the building and services; responsible for conference and hostel facilities; responsible for follow up on Centre’s utilities bills.

18. The job description of the comparator Mr Musukwa is attached as Annex II to the Rejoinder. It lists the core functions in summary as follows: preparing inputs to budgeting for staff development and training, preparing inputs to budgeting for repairs and maintenance, producing a purchase plan for essential commodities, supervising repairs and renovation works, preparing monthly and quarterly reports on the Conference and utilities Department, designing and operate a system for reservations and check-in procedures, preparing invoices for customers, designing a marketing system for the centre and conducting advertising, supervising kitchen and restaurant operations, housekeeping , coffee shop front office and grounds, preparing schedules for purchase of materials for repairs and maintenance and preparing and consolidation of quarterly work plans for the department.

The job summary is

“To work towards effective and efficient delivery of CYPRCA programmes by generating extra budgetary resources through effective management of utilities/facilities.”

19. The position reports to the Director.

20. The Answer records that the majority of staff at the Africa centre report to Mr Musukwa, who was a member of the Senior Management Team.

21. There are clearly some points of similarity between the two jobs. Each is concerned with management of the respective facilities and each involves important duties and responsibilities.
22. But we are entirely satisfied that Mr Musukwa's job involved significantly higher level and in that sense more demanding, duties and responsibilities.
23. It can be seen from the list of the respective lists of core summarised functions above that Mr Musukwa's job involved managerial and strategic elements which Mr Dogra's did not: for example designing marketing systems and advertising, preparing departmental reports and works plans. The overall "picture" presented by Mr Dogra's job description is of a "hands on" day to day supervision over a relatively small defined group of cleaners and tradesmen; whereas Mr Musukwa's job description is consistent with the Respondent's categorisation of the role as a "senior management" position.
24. The feature that Mr Musukwa had marketing and advertising responsibilities would appear to be related to the further point made by the Respondent that whereas the Asia Centre salaries were all covered by the CYP budget, the Africa Centre revenue had to cover staff salaries. Running the Africa operation as a "revenue-generating operation" is reflected in the "job summary". This entailed a "business dimension" and correspondingly, a significant pressure for Mr Musukwa's role. This had no application for Mr Dogra's role at the Asia Centre
25. The feature that Mr Musukwa reported to the Regional Director whereas Mr Dogra reported to a boss further down the hierarchy is telling in itself and bears out the contrasting impressions created by the lists of core functions. Mr Musukwa's job was demonstrably more senior.
26. The Respondent also points out that the Africa Centre conference facilities included a bar and a catering team whereas the Asia Centre catering was outsourced. It also notes that the Africa Centre included rented out residences whereas the Asia centre did not. Whilst these matters may also be relevant we think the key distinctions lie in the nature of the responsibilities in the respective jobs and the differing reporting levels.
27. We therefore conclude that Mr Musukwa's job was demonstrably more demanding and that there is no basis on which to question the decision to grade his job higher than Mr Dogra's.

28. Having reached this conclusion it follows that there is in our view no basis for any allegation of discriminatory or unfair treatment, comparing Mr Musukwa's grading with Mr Dogra's. There is no basis for regarding their respective gradings as legally flawed, irrespective of the wide discretion enjoyed by the Secretariat as employer.

29. In consequence the Application fails and is dismissed.

Costs

30. We consider that there should be no award of costs.

Given on this 8th Day of May 2015 in London

Christopher Jeans QC, President

Mr Chelva Rajah SC

Judge Sandra Mason QC