

Union of India & Ors. Vs. D.G.O.F. Employees Association and Anr.

Civil Appeal No. 1663 of 2016
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Full judgment text

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A.S. Bopanna, J.

1. The appellants-Union of India and others are before this Court assailing the order dated 14.10.2014 passed by the High Court of Delhi in Writ Petition (Civil) No.4606 of 2013. By the said order, the High Court has set aside the order dated 18.10.2012 passed by the Central Administrative Tribunal, Principal Bench ('CAT' for short) in O.A. No.39 of 2011 and the order dated 01.04.2013 passed in the Review Application bearing R.A.No.43 of 2013.

The CAT had thereby declined the relief sought by the respondents herein for parity in pay scales. The High Court while setting aside the order of CAT has held that the respondents would be entitled to the benefit in terms of paragraph 3.1.9 of the recommendations contained in the VIth Central Pay Commission (VIth CPC for short). The appellants therefore claiming to be aggrieved are in this appeal.

2. The respondent is an Association of Employees in the Head Quarters of Ordnance Factory Board. They sought for upgradation of the pay scales of Assistant and Personal Assistants of Ordnance Factory Board, Headquarters as had been given to similarly placed employees of Central Secretariat Service ('CSS' for short) and equivalent posts in Armed Force Headquarters Civil Service ('AFHCS' for short) Cadre, New Delhi and similar other cadres.

The Ministry of Defence through the order dated 20.04.2010 did not approve the same. This was communicated to the respondents by the letter dated 07.06.2010. The respondents therefore being aggrieved were before the CAT. The CAT also declined the prayer which resulted in the writ proceedings before the High Court.

3. The High Court having analysed the matter was however of the view that the members of the respondent were historically treated as equals to CSS/CSSS employees and had earlier enjoyed equal pay and all benefits. Hence a direction was issued to the appellants herein to fix the members of the Respondent Association and other similarly placed Assistants working in Ordnance Factories and in OFB in the same pay scale as was given to Assistants similarly placed in CSS/CSSS, Army Headquarters, UPSC, CAT, MEA, Ministry of Parliamentary Affairs etc. with effect from the same date as was first given to them. The appellant therefore claiming to be aggrieved by the same are in this appeal.

4. Heard Mr. R. Bala Subramanian, learned senior counsel for the appellant, Ms. Kiran Suri, learned senior counsel for the respondents and perused the appeal papers.

5. The thrust of the contention on behalf of the appellants is that the power of judicial review in matters pertaining to pay scale is limited, unless arbitrariness can be demonstrated or there is palpable discrimination. Insofar as the provision contained in the recommendations of the VIth CPC the appellants seek to rely on para 3.1.14 which recommended replacement pay scale.

The reliance placed by the respondents instead on para 3.1.9 is disputed to contend that it does not refer to employees of OFB and it is further contended that it does not extend any extra benefits. In that backdrop, it is seen that the High Court having noted the fact that the successive CPC recommendations had resulted in parity in pay scales and in view of such equal treatment historically had also considered the pay scale as provided in the VIth CPC as well as the intention as contained in para 3.1.9 which provided for parity.

6. In order to appreciate the manner in which the High Court has analysed the issue to arrive at its conclusion, it would be apposite to reproduce relevant portion of the consideration made by the High Court. The same reads as hereunder:-

"16. In this background, it would be necessary to extract the relevant recommendations of the Sixth CPC, i.e. paras 3.1.9 and 3.1.14 which reads as follows:

"3.1.9 Accordingly, the Commission recommends upgradation of the entry scale of Section Officers in all Secretariat Services (including CSS as well as non-participating ministries/departments/organizations) to Rs. 7500- 12000 corresponding to the revised pay band PB 2 of Rs.8700-34800 along with grade pay of Rs.4800. Further, on par with the dispensation already available in CSS, the Section Officers in other Secretariat Offices, which have always had an established parity with CSS/CSSS, shall be extended the scale of Rs.8000-13500 in Group B corresponding to the revised pay band PB 2 of Rs.8700-34800 along with grade pay of Rs.4800 on completion of four years service in the lower grade.

This will ensure full parity between all Secretariat Offices. It is clarified that the pay band PB 2 of Rs.8700-34800 along with grade pay of Rs.4800 is being recommended for the post of Section Officer in these services solely to maintain the existing relativities which were disturbed when the scale was extended only to the Section Officers in CSS.

The grade carrying grade pay of Rs.4800 in pay band PB-2 is, otherwise, not to be treated as a regular grade and should not be extended to any other category of employees. These recommendations shall apply mutatis mutandis to post of Private Secretary/equivalent in these services as well. The structure of posts in Secretariat Offices would now be as under:-

* This scale shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS. Services like AFHQSS/AFHQSSS/RBSS and Ministerial/ Secretarial posts in Ministries/Departments organizations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc. would therefore be covered."

Recommendations for non-Secretariat Organizations

3.1.14 In accordance with the principle established in the earlier paragraphs, parity between Field and Secretariat Offices is recommended. This will involve merger of few grades. In the Stenographers cadre, the posts of Stenographers Grade II and Grade I in the existing scales of Rs.4500-7000/Rs.5000-8000 and Rs.5500-9000 will, therefore, stand merged and be placed in the higher pay scale of Rs.6500-10500.

In the case of ministerial post in non-Secretariat Offices, the posts of Head Clerks, Assistants, Office Superintendent and Administrative Officers Grade III in the respective pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-105000 will stand merged. The existing and revised structure in Field Organization will, therefore, be as follows:-

Note1: The posts in the intermediate scale of Rs.7450-11500, wherever existing, will be extended the corresponding replacement pay band and grade pay."

Note 2 The existing Administrative Officer Grade II/Sr. Private Secretary/equivalent in the scale of Rs.7500-12000 will, however, be placed in the corresponding replacement pay band and grade pay till the time they become eligible to be placed in the scale of Rs.8000-13500 corresponding to the revised pay band PB 2 of Rs.8700-34800 along with grade pay of Rs.5400."

17. The Sixth CPC had this to say about the AFHQ Civil Service, AFHQ Stenographer's Services and other similarly placed posts in different Headquarter organizations:

"AFHQ Civil Services and AFHQ Stenographers Service

7.10.22 AFHQ Civil Services and AFHQ Stenographers Service have demanded parity with CSSS and CSS. Since the Commission has recommended parity between posts in headquarters and field offices, it is only justified that such parity also exists between similarly placed posts in different headquarter organisations. The Commission, accordingly, recommends that parity should be maintained between the posts at the level of Assistant and Section Officer in these services."

18. It is evident from the above discussion that the denial of parity is based upon the Central Governments interpretation of the 6th CPC recommendations. As observed earlier, there is about that parity had existed as between Assistants working in the OFs falling within the jurisdiction of the OFB and identically situated Assistants working in CSS/CSSS. This parity had also existed as between CSS/CSSS Assistants on the one hand and similar ranking employees in all other non-Secretariat employees working in different departments in the Central Government.

This parity existed for 10 years even after the Fifth CPC recommendations and its implementation. The singular event which brought about a change was not the result of the Sixth CPC recommendations; it was the intervening upgradation of the pay scales that had existed for Assistants in all these organizations pending the acceptance of those recommendations. The upgradation given to all others but denied to employees in OFs was the point of departure, and also the turning point of the discrimination practiced against them.

19. The Central Government's first explanation for denial is that this is in terms authorized by Para 3.1.14 of the Sixth CPC recommendations. That is plainly incorrect, because that portion of the Sixth CPC merely indicated the replacement scales from the existing Rs.5000-8000/- to be Rs.6500-10,500/-. By the time this recommendation was accepted, Assistants in the CSS/CSSS were already enjoying the higher scale of Rs.6500-10,500/-. Even the CCS (Revised Pay) Rules, 2008 support this inference.

Under Rule 3(1) of the said Rules, "existing basic pay" means "pay drawn in the prescribed existing scale of pay, including stagnation increment(s), but does not include any other type of pay like 'special pay', etc. Rule 3(2) on the other hand, prescribed "existing scale" in relation to a Government servant as "the present scale applicable to the post held by the Government servant as on the 1st day of January 2006".

Rule 3 (7) defined "revised pay structure" as one in relation to any post specified in column 2 of the First Schedule and meaning "the pay band and grade pay specified against that post or the pay scale specified in column 5 & 6 thereof, unless a different revised pay band and grade pay or pay scale is notified separately for that post." Rule 11 prescribed the mode of fixation in pay after 01.01.2006. Part B of Section II of the First Schedule to the Rules specifically stated as follows:

* This scale shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS. Services like AFHQSS/AFHQSSS/RBSS and Ministerial/Secretarial posts in Ministries/Departments organizations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc. would therefore be covered.

The interesting part of the above table is that but for the explanation it affords, the substantive part of the Rules are based on the replacement scales being in accordance with the ones indicated in Part A of the First Schedule-read with definition of "revised pay". The scales indicated, under the First schedule are in the form of merger of four pay scales- Rs.4500-7000/-; Rs.5000-8000/-; Rs.5500- 9000/- and Rs.6500-10,500/-. All are merged into one pay scale, i.e., Rs.9300-34800/-.

The Rules, as well as the Sixth CPC recommendations specifically talk of continuation of pay benefits on the basis of "historical parity". As observed earlier, this historical parity is not denied; however, the explanation for denial of the benefit of upgradation - and the consequent placement in higher pay scales, to employees in Ordnance Factories is that OFB employees are not specifically mentioned, as opposed to mention of other non-secretariat employees:

"like AFHQSS/AFHQSSS/RBSS and Ministerial/Secretarial posts in Ministries/ Departments organizations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc." This argument is both unpersuasive and specious, because mention of specific department was meant only by way of illustration; else a contrary intention would have been clearer.

That the mention of some, not all nonsecretariat employees is illustrative and not exhaustive is clear from the qualifying terms - "like" and "etc." The allusion to historical parity with reference to only a few illustrations was to encompass all those organizations where employees had identical pay scales and not merely those in enumerated departments or organizations. Any other interpretation would negate the whole intention of maintaining historical parity altogether.

21. The other submission of the respondents was that employees in Ordnance Factories were not working in Headquarters based organizations. The history of Ordnance Factories, available from the record is that by the Central Government order dated 27th September, 1975, the President had extended the Armed Forces Headquarters Service scheme mutatis mutandis to the Directorate General Headquarters Staff. Later, by order of 09.01.1979, the Ordnance Factory Board was set up at the Headquarters office of the DGOF.

These documents point to the untenability of the respondents' submission that of services are not Headquarters based services. In this context, it is worth mentioning that what comprises "Headquarters" is indicated in the Sixth CPC recommendations although no such definition exists under the CCS (Revised Pay) Rules. At para 3.1.1 of the Sixth CPC recommendations, it is stated that:

"Office staff in Headquarters and Field Organisations of Government of India 3.1.1 The various Secretariats of the Ministries and Departments of Government of India together constitute the headquarters organization. The Secretariats are chiefly involved in matters relating to the formulation of policy and ensuring that these policies are executed in a coordinated and effective manner. Actual execution of these policies, however, is left to field agencies outside the Secretariat which may be either attached or subordinate offices or quasi- Government/autonomous/public sector undertakings."

22. If the respondents' submission is that Headquarters implies the headquarters being located in New Delhi, there is no warrant either express or implied, for such a contention. Headquarters of different Central Government organizations can and are geographically dispersed- some, deliberately having regard to functional necessity and others as a historical reality. These can, without anything more, not be the basis of discrimination or valid differentiation."

7. Having noted the manner of consideration made by the High Court, before we advert to appreciate the correctness of the same, it would be necessary to take note of the rival contentions addressed relating to the power of the Court to delve into the aspect relating to determination of pay scale.

The learned senior counsel for the appellant in support of his contention that the fixation of pay scale is in the realm of the employer and the Court should exercise restraint has relied on the pronouncement of this Court in *State of Punjab and others vs. Jagjit Singh and others* (2017) 1 SCC 148 with specific reference to para 42 wherein the parameters relating to consideration of cases relating to equal pay for equal work has been adverted to and the extent to which comparison between one set of employees with another is permissible. It is stated therein that where there is no comparison between one set of employees of one organisation and another set of employees of a different organization, there can be no question of the equation of pay scales under the principle of "equal pay for equal work" even if two organizations have a common employer.

8. The decision in *Union of India vs. Indian Navy Civilian Design Officers Association and Another* (2023) SCC Online SC 173 is next referred to by the learned senior counsel for the appellant to point out the consideration made therein at para 11 to 14 with reference to the earlier decisions of this Court.

It is thereafter held therein that the Courts, therefore, should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions which undertake rigorous exercise for job evaluation after taking into consideration several factors like the nature of work, the duties, accountability and responsibilities attached to the posts, the extent of powers conferred on the persons holding a particular post, the promotional avenues, the statutory rules governing the conditions of service, the horizontal and vertical relativities with similar jobs etc.

9. The learned senior counsel for the respondents on the other hand has referred to the decision of this Court in *Union of India vs. Dineshan K.K.* (2008) 1 SCC 586 wherein it is held that though the equation of posts and equation of pay structure being complex matters are generally left to the executive and expert bodies like the Pay Commission etc. and the carefully evolved pay structure ought not to be ordinarily disturbed by the Court as it may upset the balance and cause avoidable ripples in other cadres as well, nevertheless, it will not be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the executive, the Court has no jurisdiction to examine any pay structure and an aggrieved employee cannot be left with no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the executive or the legislature.

It is further held therein that undoubtedly, when there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different departments or the basis for classification or post is *ex facie* irrational, arbitrary or unjust it is open to the Court to intervene.

10. A cumulative perusal of the opinion expressed by this Court would indicate that though the Courts would not undertake the exercise of determining the pay scale keeping in view the nature of the work by comparing employees who are not similarly placed in cases where the exercise of determining such complex issues would arise, at the same time, relief cannot be denied to the employees when the entitlement is denied due to irrational consideration without application of mind to the facts involved in the case by the employer, thereby denying the benefits to the employees.

If this aspect of the matter is kept in view, a perusal of the consideration made by the High Court as seen from the portion reproduced above from the judgment of the High Court, it would disclose that the High Court has not undertaken the exercise regarding which restraint has been expressed by this Court. However, on the admitted facts and the earlier situation which existed, a consideration has been made keeping in view the very recommendation of the Pay Commission in reckoning the appropriate application of the pay scale.

In that regard, all that has been adverted to by the High Court is as to whether the employees who are the members of the respondent and are employed in the headquarters are similarly placed as that of the employees of CSS/CSSS and in that regard has considered the matter further to ensure that the members of the respondent are not discriminated upon.

11. In that view of the matter what is to be taken into consideration is as to whether in the facts and circumstances of the present case the High Court was justified in arriving at the conclusion that the provision contained in para 3.1.9 of the Sixth CPC would apply to the fact situation and in that regard whether it had rightly rejected the contention of the appellant herein that it ought to have been guided by para 3.1.14 of the recommendations.

The contention as noted by the High Court is what was urged before us. In that regard, at the outset it is necessary to clarify that the conclusion as reached with regard to the parity in pay scale in the case of the employees who are members of the first respondent is basically due to the fact that they are employees in the headquarters of the Ordnance Factory and therefore they are similarly placed as that of the Assistants in CSS/CSSS Army Headquarters as well as such other similarly placed organisations referred to in the recommendations. If that be the position, the conclusion as reached by the High Court is unexceptionable.

12. However, the learned senior counsel for the appellant in order to buttress his contention that para 3.1.14 of the recommendations would apply has sought to rely on the decision of this Court in *Union of India and Others vs. Manoj Kumar and Others* Civil Appeal Nos.913-914 of 2021 disposed of on 31.08.2021 wherein this court while examining the very same provision as contained in paras 3.1.9 and 3.1.14 had arrived at the conclusion that the benefit of equal pay in the said case cannot be extended and had held that the Pay Commission, which is a specialised body set up with the objective of resolving anomalies had made its recommendation, which would not call for interference.

The decision would indicate that this Court though had referred to the very paragraph as contained in the Sixth CPC recommendations, what had however arisen for consideration therein was with regard to disparity between Secretariat and Field Officers. What was noted in that case was the claim made by Private Secretaries Grade II employed in Eastern Central Railways (Field Office/Zonal Railways) for parity in pay with their counterparts working in the Central Secretariat Stenographers Service/Railway Boards Secretariat Stenographers Service/Central Administrative Tribunal.

In that view, this Court was of the view that though there is an observation that the recommendations shall apply *mutatis mutandis* to Private Secretaries and posts equivalent thereto in the service under para 3.1.9; the subsequent para 3.1.14 has specifically dealt with the aspect of parity between the Field and Secretariat Offices which was really the subject matter of the claim therein. The said observation, though emphasised by the learned senior counsel for the appellant would indicate that it is not a consideration akin to the consideration herein.

As seen from the highlighted portion of the reproduced paragraphs from the impugned order passed by the High Court hereinabove, it would disclose that in the instant facts the reliance placed by the High Court on para 3.1.9 is based on the fact that there was similarity inasmuch as the pay scale as sought for implementation is the one which was provided to the employees of the headquarters as they were similarly placed as the employees of the headquarters in CSS/CSSS.

13. Further, what was also taken into consideration by the High Court is the historical similarity in pay scales which existed prior to the recommendations in the Sixth CPC. Such historical similarity which had existed was taken note and, in that light, the pay scale which was applicable was taken into consideration and had accordingly arrived at the conclusion that the employees in the headquarters of the Ordnance Factories being similarly placed cannot be discriminated. Therefore, such consideration in the instant case would fall within the parameters as permitted by this Court.

Also, in the present circumstance, the High Court has adverted to the fact situation and has thereby rectified the pay anomaly. In fact, the question of parity with regard to the pay scale to the Assistants in the lower formations in the Indian Navy with that of the Assistants in CSS was held as discriminatory and violative of Article 14 of the Constitution by this Court in the case of All India Naval Clerks Association and Others vs. Union of India and Others in Civil Appeal arising out of Special Leave Petition (Civil) No.29204 of 2019 dated 27.07.2022.

14. As noted by the High Court, it is evident that parity of pay scales vis-à-vis LDCs, UDCs, Assistants/PAs and Stenographers, was maintained even prior to 01.01.1986 under the Third Central Pay Commission recommendations (for the period of 01.01.1973 to 31.03.1985).

This parity was continued in the Fourth Central Pay Commission recommendations (with effect from 01.01.1986 to 31.12.1995) and the Fifth Central Pay Commission recommendations (for the period 01.01.1996 to 14.09.2006). The post of Assistants, PAs and Stenographers is governed by Director General Ordnance Factories Headquarters Civil Service Rules, 1977.

15. Be that as it may, in the present facts the perusal of the judgment passed by the High Court impugned herein would indicate that the High Court having kept in view the legal, as well as the factual aspects, has not proceeded in a manner so as to equate two sets of employees in different organizations.

But, keeping in view the recommendation of the Pay Commission and the applicability of the pay scales recommended to similarly placed employees employed in the headquarters and on noticing discrimination despite historical similarity has merely rectified the error, which does not call for interference.

16. In view of the above, the appeal being devoid of merit, stands dismissed with no order as to costs.

17. Pending application, if any, shall stand disposed of.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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