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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.2080/03

Reserved on: 14th May, 2009.

Pronounced on: 21st May, 2009.

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S.K. Rattan

.....Petitioners

Through:

Mr. Rajesh Rattan, Advocate

VERSUS

Union of India & Ors.

.....Respondent

Through:

Mr. A.K. Bhardwaj, Advocate

CORAM:-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE V.K.JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest? Yes

V.K.JAIN, J.

1. The petitioner was working as a Deputy S. P. In Data Section of the Co-ordination Division of Central Bureau of Investigation till 12th April, 1988. Vide order dated 11th November, 1987 issued with the sanction of the President, administrative control of Data Section of Coordination Division of the CBI was transferred to National Crime Records Bureau (hereinafter referred as NCRB) along with ten posts

including one post of Deputy S.P. Vide order dated 12th April, 1988, services of the petitioner were placed at the disposal of NCRB, on transfer basis. At the time of transfer the petitioner was drawing salary in the pay scale of Rs.2200-4000, which was the pay scale of Dy. S.P. in CBI.

2. Vide order dated 13th April, 1992, the pay of the petitioner was re-fixed in the pay scale of Rs.2000-3500. Consequent to the revision of pay of Dy.S.P. in CBI, the petitioner was allowed to draw pay in the pay scale of Rs.2200-4000 w.e.f. 12th April, 1988, the day he was transferred to NCRB.

3. The petitioner was promoted as Joint Assistant Director in NCRB on 25th February, 1997 and was placed in the pay scale of Rs.3000-4500. Since the pay scale of Superintendent of Police in CBI was Rs.4100-5300 (pre revised), he represented seeking re-fixation of his pay in the pay scale of Rs.4100-5300 (pre-revised) w.e.f. date of his promotion to the post of Joint Assistant Director. The representation having been rejected he filed O.A. no. 1436/2000 seeking for redressal of his grievance. The Tribunal vide order dated 1st October, 2001 dismissed the O.A. The order of the Tribunal has been assailed in the present writ petition.

4. The grievance of the petitioner is that the respondent had maintained his parity with his counter-part in CBI, till the date of his promotion as Joint Assistant Director and since the post of Joint Assistant Director in NCRB corresponded to the post of Superintendent of Police in CBI and the two posts are identical, requiring same qualifications and eligibility and a Joint Assistant Director in NCRB performs the same functions as are performed by Superintendent of Police in Data Section of CBI,

he is entitled to be placed in the pay scale of Rs. 4100-5300 (pre-revised) w.e.f. the date of his promotion as Joint Assistant Director.

5. The respondent has contested the petition and has denied the claim that the post of Joint Assistant Director in NCRB is identical to the post of S.P. in CBI. According to the respondent, since the petitioner ceased to be an employee of CBI w.e.f. 12th April, 1988, his services thereafter were to be governed by rules and regulations of NCRB and not by those of CBI. As regards revision of pay of the petitioner in the scale of Rs.2200-4000, the counter affidavit shows that it was done for the reason that the petitioner was on the strength of CBI on 1st January, 1986, the date from which the pay scales of Dy.S.P. in CBI were revised by DO&PT.

6. It is an admitted case that the services of the petitioner were transferred to NCRB, consequent to Presidential Order, transferring the administrative control of Data Section of Coordination Division of CBI to NCRB, alongwith ten posts including one post of DYSP. Once the services of petitioner were transferred to NCRB, he ceased to have any link with CBI and his salary and other service conditions were to be regulated in terms of rules, regulations and decisions of NCRB. It is true that pay of the petitioner was re-fixed in the scale of Rs.2000-3500 vide order dated 13th April, 1992 and later re-fixed in the pay scale of Rs.2200-4000 vide subsequent order dated 10th June, 1996. But, as stated in the counter affidavit and reflected in the orders dated 13th April, 1992 and 10th June, 1996, this was done because as on 1st January, 1986, which was the crucial date for implementation of the recommendation of the Fourth Pay Commission, the petitioner was in the service of CBI and not in the service of NCRB. It was obligatory for the respondent to re-fix his

salary as on 1st January, 1986, depending upon the pay scale of Dy. S.P. in CBI on that date. As the order dated 13th April, 1992 would show the first re-fixation was on account of dismissal of O.A No. 1515/97, by Central Administrative Tribunal, whereas the second pay fixation was on account of pay scale of Dy. S.P. in CBI being upgraded to Rs.2200-4000 w.e.f. 1st January 1986. Since the pay of the petitioner as Dy. S.P. in CBI came to be fixed in the pay scale of Rs.2200-4000, he had to be given the pay in the same pay-scale w.e.f. 12th April, 1988, when his services was transferred from CBI to NCRB. It was not legally permissible for NCRB to place him in a pay scale lower than that he enjoyed in the CBI at the time of his transfer to NCRB. It is, thus obvious that the petitioner transfer to NCRB, came to be placed in the pay scale enjoyed by Dy.S.P. in CBI, only because he was working in CBI on 1st January, 1986 and not because the respondent had granted him pay scales applicable to the employees of CBI. The petitioner cannot claim pay scale of the post of Superintendent of Police in CBI on the ground that had he continued to remain in CBI till 24th February, 1997, when he was promoted to Joint Assistant Director in NCRB, he would have been promoted as Superintendent of Police in CBI and his pay would have been fixed in the pay scale of Rs.4100-5300 (pre-revised). An employee whose services are transferred from one organization to another organization, by virtue of a Presidential Order, cannot claim pay scale or any other benefit applicable to the employees working in the organization from which he stands already transferred.

7. It was contended by the learned counsel for the petitioner that NCRB also being a Central Police Organization like CBI, pay-parity has to be maintained in identical post of the two organizations. We do not find any merit in this contention.

8. The case of the respondent, as stated in the counter affidavit, is that CBI is a Central Police organization while NCRB is attached with Ministry of Home Affairs and is not a Central Police Organization. The question whether NCRB is a Central Police Organisation or not, cannot be decided by this Court, in writ jurisdiction, as it involves detailed examination of a number of factors, by an expert panel. We, however, need not to go into the question as to whether NCRB is a Central Police Organization or not as we are of the view that even if it is presumed for the sake of argument that NCRB is a Central Police Organization that by itself will not entitle its employees to the pay scales and other benefits enjoyed by the employees of CBI. In every organization, there are employees in different cadres, at different levels. If the proposition advanced by the learned counsel for the petitioner is accepted, that would mean identical pay scales for the employees of all Central Police Organizations. Whether all the employees performing similar functions in various Central Police Organizations should be given identical pay scales or not is a matter of policy to be decided by the Government after examination of all relevant factors and not by the Courts.

9. In *Union of India and another Vs. P.V. Hariharan (1997)3 SCC 568*, the Hon'ble Supreme Court reminded the Tribunals that fixation of pay was not their function and was a function of the Government which normally acts on the recommendations of a Pay Commission. The Hon'ble Supreme Court observed that :

“very often the doctrine of equal work and equal pay was mis-represented by enhancing the pay scales and advised exercise of due constraint by the Tribunals in such matters. It is held that unless a clear case of

hostile is made out there would be no justification for interfering with the fixation of pay scales.”

10. In ***State of Madhya Pradesh and another Vs. Pramod Bhartiya and others JT1992 (5) SC 683***, the Hon’ble Supreme Court inter alia held as under:

“It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by Mukerjee, J. (as he then was) in Federation of All India Customs and Excise Stenographers Vs. Union of India, 1988(3)SCC 91, the quality of work may vary from post to post. It may vary from institution to institution.”

11. In ***State of Haryana and others Vs. Jasmer Singh and others JT1996(10)SC 876***, the Hon’ble Supreme Court noted that there are inherent difficulties in comparing and evaluating the work done by different persons in different organizations or even in the same organization. The Hon’ble Supreme Court observed as follows:

“It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay-scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay-scale. There may be various other similar considerations which may have bearing on efficient performance in a job. This Court has repeatedly observed that

evaluation of such jobs for the purpose of pay-scale must be left to expert bodies and, unless there are any mala fide, its evaluation should be accepted.”

12. We cannot lose sight of the fact that pay scales are only one component of the service condition of an employee and there are various other equally important factors in career progression such as promotion revenues, work-culture, working-environment etc. In any case, there is no material on record to conclude that the post of Superintendent of Policy in CBI and Joint Assistant Director in NCRB are identical in respect of nature of duties, powers exercised, functions and responsibilities.

13. In *State of Haryana and another Versus Haryana Civil Secretariat Personal Staff Association JT 2002(5)SC 189*, the Hon’ble Supreme Court noted that in *Secretary Finance Department & Ors. V/s. West Bengal Registration Service Association and Ors. JT 1992 (2) SC 27*, the Hon’ble Court had observed as under:

“Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake some times on account of want of relevant data and scales for evaluating performance of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with others department etc.

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. That the claim of the equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity and duties and responsibilities is a complex matter which is for the executive to discharge."

14. While concluding arguments, the learned counsel for the petitioner has submitted copies of judgments reported in ***Union of India & Ors. V/s Dineshan K.K. 2008 I AD (SC) 608, BCPP Mazdoor Sangh & Anr., V/s NTPC 2007 (12) Scale 204, K.T. Veerappa and Ors. V/s State of Karnataka and Ors. 2006 SCC (L&S) 1823 , State of Mizoram V/s Mizoram Engineering Service Association 2004 Sc 3644, State of U.P. and Ors. V/s J.P. Chaurasia and Ors. 1989 SCC (L&S) 71, Jaipal V/s State of Haryana 1988 (2) SLR 710, Kirpal Jeet V/s The State of Punjab and Anr. 1987 (4) SLR 594.***

15. In the case of ***Dineshan K.K. (Supra)***, the Hon'ble Supreme Court after referring to a number of its decisions on the concept of equal pay for equal work held that “

“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 posts is ex-facie irrational, arbitrary or unjust, it is open to the Court to intervene.”

16. However, in the present case there is no material before us to hold that the qualifications duties and responsibilities of the persons holding the post of Superintendent of Police in CBI are identical to those holding post of Joint Assistant Director in NCRB.

17. In the case of ***BCPP Mazdoor Sangh (supra)***, the Hon’ble Supreme Court held that:

“The Government or its instrumentality cannot alter the conditions of service of its employees and any such alteration causing prejudice cannot be effected without affording opportunity of pre-decisional hearing and the same would amount to arbitrary and violative of Article 14. In the case before the Hon’ble Supreme Court the employees were neither the party to the tripartite agreement nor they were heard before changing their service conditions and, therefore, the action of the management was found to be violative of Article 14 of the Constitution of India.”

18. However, in the present case, there was no alteration in service condition of the petitioner on transferring from CBI to NCRB. He was placed in the same pay scale in which he was placed while working as Dy. S.P. in CBI. But, once he had been transferred to NCRB his further promotion was to be regulated by the service conditions applicable to the employees of NCRB and he was entitled to only that pay-scale which was attached to the post to which he was promoted in NCRB.

19. In the case of ***K.T. Veerappa (supra)***, the Hon’ble Supreme Court held that :

“Though pay fixation and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.”

20. This judgment does not help the petitioner as his pay fixation cannot be said to be unreasonable and unjust. On promotion he is not entitled to pay scale attached to another promotional post in the organization in which he was working before his transfer.

21. In the case of ***Mizoram Engineering Service Association (supra)***, the government failed to frame the recruitment rules so as to bring engineering service within the framework of organized service and consequently termed it as an unorganized service. The act of State Government was not appreciated by the Hon’ble Supreme Court. The Hon’ble Supreme Court observed that :

“The main reason for dubbing Engineering Service as an unorganized service in the State is absence of recruitment rules for the service. Who is responsible for not framing the recruitment rules ? Are the members of the Engineering Service responsible for it ? The answer is clearly ‘No’. For failure of the of the State Government to frame recruitment rules and bring Engineering Service within the framework of organized service, the engineers cannot be made to suffer. Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly any difference in organized and unorganized service so far as Government service is concerned. In Government service such a distinction does not

appear to have any relevance. Civil Service is not trade unionism.”

22. This judgment does not at all apply to the facts of present case.

23. In the case of **J.P. Chaurasia** (*supra*), the Hon’ble Supreme Court referring to Article 39 (d) of the Constitution of India noted as under:

“This Article and other likewise provisions of Directive Principles are conscience of our Constitution. They are rooted in social justice. They were intended to bring about a socio-economic transformation in our society.”

24. This Judgment is of no help to the petitioner. In fact the Hon’ble Supreme Court itself held that the equalization of post or equalization of pay must be left to the Executive Government and must be determined by expert bodies like Pay Commission, who would be the best judge to evaluate the nature of duties and responsibilities of post.

25. In the case of **Jaipal** (*supra*), the Hon’ble Supreme Court noted that :

“If the two classes of persons do same work under the same employer with similar responsibilities under similar work conditions, the doctrine of ‘equal work equal pay’ would apply and it would not be open to the State to discriminate one class with the other paying salary.”

26. This judgment has no application to the facts of the present case as the petitioner is now working with NCRB and not with CBI and, therefore, cannot claim pay scales applicable to those working in CBI.

27. In the case of ***Kirpal Jeet (supra)***, the Hon'ble Supreme Court held that :

“Once the State Government decided to equate the pay scale of a certain post with that of another post, it is not open to it to discriminate between the incumbents of the two posts for the grant of pay scale at the time of subsequent revision of pay scales.”

28. That judgment does not help to the petitioner as NCRB has never treated the post of its Joint Assistant Director to the post of Superintendent of Police in CBI.

29. For the reasons given in the preceding paragraphs, we find no merit in the writ petition and same is accordingly dismissed.

(V.K. JAIN)

JUDGE

(A.K. SIKRI)

JUDGE

May 21 , 2009

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