

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

% Judgment Reserved on: July 27, 2012
Judgment Pronounced on: August 1, 2012

+ **W.P. (C) No.2509/2003**

DAYA SHANKAR OJHA Petitioner
Represented by: Mr. Vinod Wadhwa, Advocate
alongwith Petitioner in person

versus

UOI & ORS Respondents
Represented by: Mr. Ruchir Mishra, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present writ petition has been filed under Article 226 of Constitution of India seeking a writ in the nature of mandamus directing the respondents to remove the disparity between General Reserve Engineer Force (hereinafter referred as GREF) Personnel and army personnel Posted in GREF.

2. The facts leading up to filing of the present petition can be enunciated as under:

- a) The petitioner claims to be serving in GREF since 25th February, 1964.
- b) The petitioner first explained the origin of GREF in the writ petition by placing reliance upon the judgment passed by the Supreme Court in the case of AIR 1983 SC 658, R.Viswan & Ors. v. Union of India & Ors., wherein there is an extensive discussion as to how GREF emerged as a force connected with the works of army personnel

and what are the functions assigned to GREF as a force. It is stated that in the case of R.Viswan's case (supra), the Hon'ble Supreme Court declared that GREF is an integral part of the Armed Forces, raised and maintained by Union Government under Article 33 of the Constitution and thus, the provisions of the Army Act, 1950 and Army Rules, 1954 made thereunder are applicable to them.

- c) It is stated by the petitioner that the GREF personnel are drawn partly from the Armed Forces and partly by direct recruitment. The grievance of the petitioner is that within the same force and in the same mess, there is prevalent disparity existing between the personnel which has been done by the respondents by according differential treatment in the form of providing different food, ration of different costs which is lower for direct recruit and higher for army personnel deputed therein, different salary and allowances, different ration provisions etc.
- d) The petitioner in this context relied upon the Judgment in R. Viswan (supra) wherein the Supreme Court has observed that in case it is found that there is disparity, then the Central Government if so advised, might well consider the advisability of taking steps to remove such disparity if any, such as salary, allowances, ration etc of army Personnel posted in GREF and other officers and men in GREF.
- e) The petitioner drawing the aid from the said observation of the Supreme Court had written letters to the Ministry of Defence to remove disparity between GREF personnel and the army personnel posted in GREF by pointing out such disparities. The petitioner also wrote a letter to Mr.Chandershekhar (M.P.) on 5th April, 1987 seeking

similar demands of removal of disparity. Similar letters were issued in the years 1988, 1991 ad 1998 in this respect.

- f) As per the petitioner, in the year 2001 a Committee was set up for improvement of terms and conditions of GREF personnel, but the Ministry of Defence thereafter declared GREF personnel as workmen under the definition of Workmen Compensation Act, 1923 in order to deprive the benefits which could have been given to the petitioner.
- g) The petitioner has stated in the writ petition that the functions and duties of the army personnel and GREF personnel are complimentary to each other and they cannot function without the aid of each other. They both work together under one administration, live together and are governed by the Army Act, 1950 and Rules made thereunder in 1954 , their fundamental rights are equally curtailed, they are dining in one mess at a time. Therefore, there is no reason they should be treated different on the aspects of salary, allowances and ration etc. this is more so when there are observations of the Supreme Court in this respect and the relevant departments like Ministry of Defence and Secretary Border Road Development Board and the Director General are alerted about the Supreme Court observations and the disparity conducted amongst the GREF personnel.
- h) Accordingly, when the petitioner did not hear from the relevant departments of the respondents, he has approached this court seeking mandamus commanding

the respondent to remove disparity between the GREF personnel in general and army personnel posted in GREF.

3. The notice was issued in the present writ petition and the respondents filed the counter affidavit in reply contending the following:

- a) That GREF is a construction agency raised under Ministry of Surface Transport and members of GREF are governed by Civil Service Rules, 1965 with regard to the terms and conditions of service and certain provisions of Army Act, 1950 are also applicable to them for the purpose of discipline in addition to Civil Rules.
- b) That a similar writ petition had been preferred by some P. Chandra Mouli as CWP 1390/ 1992 which had been dismissed by this court stating that what pay scales and allowances are to be granted is a matter of policy which is to be decided by the Government. The said petition was dismissed accordingly. This court should adopt the same approach.
- c) The Supreme Court in the case of R. Viswan (Supra) has nowhere held that army personnel are to be treated at par with the GREF personnel. This is a wrong understanding of the judgment by the petitioner and the claims of the petitioner are liable to be rejected.
- d) The counter affidavit also in paragraph 15 attempts to address the concerns raised by the petitioner point wise and it is stated that some of the proposals are pending consideration with government while some were accepted conditionally and some were rejected.

4. It is otherwise the stand of the respondents that the petitioner and GREF personnel for all reasons cannot be

equated with army personnel as the GREF is an agency raised under the Ministry of Surface Transport though GREF personnel may have to be treated for certain purposes of discipline as army personnel but they are actually governed by the Civil Service Rules, 1965.

5. The petitioner has filed the rejoinder to the said counter affidavit refuting the stand of the respondents. The matter thereafter came up for hearing when Mr.Vinod Wadhwa Advocate appeared on behalf of the petitioner and Mr.Ruchir Mishra, Advocate appeared on behalf of the respondents.

6. Learned counsel for both the petitioner and respondents reiterated the submissions made in the writ petition and the counter affidavit and therefore, they are not being reproduced for the sake of brevity. We have gone through the records of present proceedings. We shall now proceed to discuss the matter on merits.

7. We think that it is for us to first discuss and understand in what context Supreme Court has rendered the judgment of R. Viswan (supra). GREF as stated by the parties is an agency which has been raised by the armed forces but they are not army personnel in the strict sense of the term. However, the Central Government is empowered under Section 4 of the Army Act, 1950 to apply the provisions of the said Act and Rules to any force raised and maintained in India under the authority of the Government. Likewise, the Government by notification No. SRO 329 and 330 dated 23rd September 1960 applied the provisions of the Army Act, 1950 and Rules made thereunder to GREF as well. The question before Supreme Court arose about the fundamental rights of the GREF personnel where they had conducted some unlawful assembly by shouting slogans and caused violence and the Court was called upon to answer

whether the GREF personnel are governed by Section 21 of the Act which curtails the fundamental rights of the Armed Forces, consequently whether GREF is an integral part of the Armed forces raised and maintained and also whether the same can be justified on the basis of applicability of the Article 33 wherein the legislature by law can curtail such fundamental rights of the forces.

8. The Supreme Court in this context analyzed the genesis of GREF as a part of the armed forces and also their duties and functions, coupled with the fact that the Central Government's power to apply the provisions of the Act to the forces raised, meaning of the word force and thereafter came to the conclusion that for the purposes of discipline, GREF personnel are governed by the provisions of the Army Act, 1950 and they being a part of the armed forces are subjected to same level of discipline and their fundamental rights are equally curtailed like army personnel. Thus, the court martial of the GREF personnel cannot be said to be ultra vires Article 33 of Indian constitution.

9. This finding was arrived at by the Supreme Court after carefully analyzing the functions and duties assigned to the GREF personnel and simultaneously realizing that GREF personnel are army personnel while discussing the need for formation of GREF formation. Thus, in result the Supreme Court has held that the GREF Personnel are integral part of the Armed Forces for the purposes of discipline and provisions which were made applicable by way of notification dated 23rd September 1960. However, the Supreme Court categorically recorded that the aspects of salary, allowances etc are not determinative factors coming in the way of deciding whether the GREF personnel are an integral part of the Armed forces or not. In the

words of Supreme Court in R Viswan (Supra), the Supreme Court observed thus:-

“The result is that the directly recruited GREF personnel are governed by the provisions of Central Civil Service (Classification, Control and Appeal) Rules 1965 as amended from time to time but for purposes of discipline, they are subject to certain provisions of the Army Act 1950 and the Army Rules 1954 as laid down in SROs 329 and 330 dated 23rd September 1960.

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“9. The history, composition, administration, organisation and role of GREF which we have described above while narrating the facts clearly show that GREF is an integral part of the Armed Forces. It is undoubtedly a departmental construction agency as contended on behalf of the petitioners but it is distinct from other construction agencies such as Central Public Works Department etc., in that it is a force intended primarily to support the army in its operational requirement.....(Emphasis Supplied).

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11. Before we part with this point, we may point out that an anguished complaint was made before us on behalf of the petitioners that there is considerable disparity between the Army personnel posted in GREF units and the other officers and men of GREF in so far as the terms and conditions of service, such as, salary, allowances and rations are concerned. It is not necessary for us to consider whether this complaint is justified; it is possible that it may not be wholly unjustified but we may point out that in any event it has no real bearing. It all on the question whether the members of GREF can be said to be members of Armed Forces. Since, the members of GREF are drawn from two different sources, it is possible that the terms and conditions of service of the personnel coming from the two sources may be different. The Army personnel posted in GREF units

naturally carry their own terms and conditions of service while the other officers and men in GREF are governed by their own distinctive terms and conditions. It is difficult to appreciate how differences in terms and conditions of service between GREF personnel coming from two different streams can possibly have any impact on the character of GREF as a force integral to the Armed Forces. **It is immaterial for the purpose of determining whether the members of GREF are members of the Armed Forces as to what are the terms and conditions of service of the members of GREF and whether they are identical with those of Armed personnel appointed on the same or equivalent posts in GREF units.....”** (Emphasis Supplied)

10. However, it is altogether a different matter that while considering whether the GREF is an integral part of the Armed Forces, the Supreme Court also proceeded to hear the complaints made by GREF that there is lot of disparity between the GREF personnel who are directly appointed and Armed personnel deputed as GREF personnel. The Supreme Court noted that it is natural due to the rules governing different conditions of services, however, the Government may consider the same if it is found that such disparity exists. The relevant paragraph of the Supreme Court judgment reads thus:-

“But, we may observe that in case it is found that the terms and conditions of service of officers and men in GREF directly recruited or taken on deputation are in any way less favourable than those of Army personnel appointed to the same or equivalent posts in GREF, the Central Government might well consider the advisability of taking steps for ensuring that the disparity, if any, between the terms and conditions of service, such as, salary, allowances, rations etc. Of Army personnel posted in GREF units and other officers and men in GREF is removed.”

11. From the reading of the afore quoted paragraph from observations of the Supreme Court, it is clear that the aspect

of whether GREF is an integral part of the armed forces is not dependent upon the condition of services of the GREF personnel. The Supreme Court in R.Viswan (Supra) on compassionate grounds suggested that the Central Government may take measures to remove such disparity, if it is found to be existing.

12. The pious expression expressed by the Supreme Court has not been ignored by the respondents. Admittedly, the matter was seriously pursued, and wherever possible the disparities were removed. This stands minuted in the decision taken at a high-level meeting on March 21, 2001 in which the Defence Secretary presided and officers from the Ministry of Finance and Border Roads Organization were present. The first benefit granted was the extension of grant of North-East concessions i.e. monetary benefits available to the employees of Border Roads Organization. Same benefit was made available to GREF employees. Similarly, high altitude allowance was sanctioned but under the label 'Project Allowance'. Concession Voucher/Free Pass by Rail, once in a calendar year in the event of death, serious illness or marriage of a member of the family was also sanctioned. Bringing them at par, with Army personnel, GREF personnel deployed in the State of Jammu & Kashmir were sanctioned double HRA in view of the fact that the area was militancy prone and these employees could not bring their families with them, resulting in two establishments being maintained. Disparity in ration scales i.e. the rations granted inter-se the Army and GREF employees was also removed. Similarly, casual leave was also enhanced from 10 to 15 days and parity brought.

13. We therefore find that it is a matter of policy decision of the Government to remove such disparity by changing the

Rules relating to payment of allowances, salary and ration etc and not a matter of legally enforceable right of the petitioner to insist the Government to frame such policy by seeking a writ of mandamus through this court. We find that the Government has applied its mind on the subject and has accorded such benefits as could possibly be granted.

14. It is well settled law that the writ of mandamus is maintainable only where there is a legally enforceable right and there is a public nature enforceable duty which can be insisted by way of such command.

15. In A.I.R. 1977 SUPREME COURT 276, M.S. Jain v. State of Haryana, Their Lordships have held that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as legally protected right before one suffering a legal grievance can ask for a mandamus. Para 9 of the said judgment is usefully extracted here under:-

“The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something”

16. Again in A.I.R. 2002 SC 1598, Director of Settlements, A.P. v. M.R.Apparao, the Supreme Court has held that a notice can be issued only if he or she has got a legal right which has been infringed. In the words of Supreme Court, it was observed thus:

“Coming to the third question, which is more important from the point of consideration of the High Courts power for issuance of mandamus, it appears that the Constitution empowers the High Court to

issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression "for any other purpose". The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression "for any other purpose" in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. **One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command.** It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. **Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party**

against whom the mandamus is sought and such right must be subsisting on the date of the petition”
(Emphasis Supplied)

17. Thus, as stated already, since the petitioners are not having any legally enforceable right as it is merely a policy matter, a writ in the nature of mandamus as sought for against the respondents cannot be issued.

18. It is equally trite that this court while exercising the powers of writs which although is of widest plentitude cannot direct the Government to frame the law on the subject or frame the policy in the manner prescribed by the court. The said domain has to be left within the ambit of legislative powers of the parliament or central government where need be.

19. In JT 2005 (9) 210, Suresh Seth vs. Commissioner, Indore Municipal Corporation and others, a three Judge Bench of the Supreme Court rejected the petitioner's prayer that appropriate amendment be made to the M.P. Municipal Corporation Act, 1956 debarring a person from holding two elected offices viz. that of a member of the Legislative Assembly and also of Mayor of a Municipal Corporation. The Court observed:

"That apart this Court cannot issue any direction to the Legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power or authority to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation."
(Emphasis Supplied)

20. In (1989) 4 SCC 187, Supreme Court Employees Welfare Association vs. Union of India, it has been held by the Supreme

Court that no court can direct a legislature to enact a particular law. **Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority".** (Emphasis Supplied)

21. Applying the said principle of law to the present case, once the Supreme Court has observed in the case R. Viswan (Supra) if in case, it is found that the terms and conditions of service of the officers and men in GREF directly recruited or taken on deputation are in any way less favourable than those of army personnel, then Central Government might well consider the advisability of taking steps to remove such disparity, this court besides reiterating the said observations cannot compel the Central Government to frame the policy or proceed to insist the removal of such disparity as it is a matter of policy decision due to the reason that the existing conditions of services of GREF personnel appointed directly is of civil servants and army personnel deputed in GREF operate differently. Consequently, we find no merit in the writ petition and the same is therefore dismissed.

22. No Costs.

(MANMOHAN SINGH)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 01, 2012