

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

+ **W.P.(C) 8525/2009**

% Judgment reserved on: 25th July, 2012
Judgment delivered on: 30th July, 2012

CHANDER SINGH Petitioner

Through: Mr. U. Srivastava, Adv.

versus

UOI & ORS. Respondents

Through: Mr.Amit Anand, Adv. for R1.

CORAM:
HON'BLE MR. JUSTICE SURESH KAI

SURESH KAIT, J.

1. Vide the instant petition, petitioner is seeking to quash and setting aside the order dated 25.07.2008 whereby on application being moved by the petitioner, it was decided as under:-

“(a) There is no anomaly.

(b) The individual has given two promotions

(c) As per comparative statement and existing Rule, the case is not required stepping up as well as revision of pay.”

2. Initially, the petitioner approached the Central Administrative Tribunal, Principal Bench, New Delhi vide O.A. No. 2119/2004. Ld.

Tribunal dismissed the same on jurisdiction.

3. The case of the petitioner in brief is that he was appointed as Vendor in a Unit Workers' Canteen on 28.08.1970. Thereafter, appointed as Assistant Canteen Supervisor-cum-Cashier, vide communication dated 14.02.1981 in the Pay Scale of Rs.110 – 180/- w.e.f 10.02.1981 as under:

“Commandant 505 Army Base Workshop Delhi Cantt hereby appoints Shri Chander Singh, S/o, Shri Daulat Singh as Assistant Supervisor cum Cashier in a temporary capacity w.e.f 10.02.1981 unit further orders at Rs.110/- p.m. in the scale of Rs.110-3-131-4-175-5-180/-. He will be on probation for a period of three months w.e.f 10.02.1981. His services will be liable terminated without any notice during probationary period.”

4. Thereafter, respondents issued an order dated 21.09.1982 on the subject 'Pay Scale of employees of Canteen established in Defence Industrial Installation under Section 46 of Factories Act, 1948' as under:-

“I am directed to refer to this Ministry's letter no. 18 (1) 80/D (JCM), dated 25.07.1981 read with subsequent letter dated 09.12.1981 declaring the employees of canteens established in Defence Industrial Installations U/s 46 of the Factories act, 1948, as Govt. Employee w.e.f 22.10.80 and to state that the President is please to sanction the following pay scale for these employees:-

<i>Existing Grade</i>	<i>New Pay Scale</i>
xxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxx
<i>Assistant Supervisor cum-</i>	<i>Rs. 210-4-226-EB-4</i>

Cashier / Clerk-cum-Cashier -250-EB-5-290
Etc. (Presently the scale of
Rs.110-3-131-4-175-5-180/-)

xxxxxxxxxxxxxxxx

xxxxxxxxxxxxxxxx”

5. The respondent published DO Part II No. 145/NIP dated 1982 revising the pay scale of the Unit Run Civilian Workers' Canteen Staff and the petitioner was granted the pay scale of Rs.196-232 as Vendor w.e.f 22.10.1980 and Rs.210-290 as Assistant Supervisor-cum-Cashier w.e.f 10.02.1981.

6. The Recruitment Rules namely, 'Defence Factory Canteen Employees Recruitment Rules, 1985' were published by the respondents vide its order dated 23.08.1985.

7. Thereafter, the revised pay of Civilian Canteen Staff was issued granting the annual increment of pay vide its order dated 20.05.1989 by which the pay scale of Assistant Canteen Supervisor-cum-Cashier has been shown as Rs.210-4-226-EB-4-250-EB-5-290, whereas the pay scale of 'Cook' was shown as Rs.200-3-21-4-232-EB-4-240.

8. Ld. Counsel appearing on behalf of the petitioner submitted that the petitioner made representation on 15.07.1996 on the contentions as under:

“(a) That there is a major anomaly in my pay as my junior staff are drawing more than me in lower grade in spite of being Supervisor Canteen and the Cooks were appointed 2 years later than me.

(b) That I was appointed as Canteen vendor on 28.08.1970 and after 10 years of service I was promoted as Assistant Canteen Supervisor cum cashier in the scale than 110-180 w.e.f 07.02.1981.

(c) Again during Sep 1990 I was further promoted to Supervisor Grade III 950-1500

(d) At present I am drawing Rs.1110/- p.m. in my present scale.

(e) Buy the cooks who are too junior to me and were appointed two years later to me i.e. w.e.f July are also even more that Rs.1110/- pm besides the other facilities extended to them like washing allowance etc.

9. It is further submitted that in view of the above, petitioner being the Senior in both the ways i.e. by virtue of length of service as well as elevation to Supervisor Gr.-III, his pay would have been more than his subordinate 'Cooks' in the Workers' Canteen.

10. In response to its representation, respondent passed an order that there was no anomaly and there is no comparison of the two grades of Canteen Supervisor Gr.-III and Grade of 'Cook'.

11. Ld. Counsel has relied upon a case of ***Bhadei Rai v. Union of India & Ors. in Civil Appeal No. 3154/2005*** decided by the Apex Court on 06.05.2005, wherein it is held as under:-

"9. After hearing learned counsel for the parties we find that claim of the appellant deserves to be partly allowed on the basis of judgments of this Court in a somewhat similar situation in the case of Indra Pal Yadav v. Union of India (Writ Petition No. 548 of 2000) decided on 13.1.2003. In the case of Inder Pal Yadav (supra) this Court held that since promotion from Group 'C' to Group 'D' was ad hoc, the order of reversion to the post in parent department cannot be questioned. This court, however, held that although the order of reversion from promoted post in Project to substantive post in regular line is unquestionable, the appellant, in any case, is entitled to

pay protection. The relevant part of the order of this Court in Inder Pal Yadav's case reads thus:

"However, while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other project, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such re-posting of the petitioners is based on selection.

Additionally, while it is open to the Railway Administration to utilize the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade test which may have been passed by the petitioners as well as length of service rendered by the petitioners in the several projects subsequent to their regular appointment."

10. In the case of the present appellant, the aforesaid directions squarely apply. The appellant had to undergo a screening test in the year 1995 and in the result declared in 1997, the appellant had qualified. A long period of twenty years has been spent by the appellant on a higher post of Rigger in group 'C' post. In such circumstances, he

is legitimately entitled to the relief of pay protection and consideration of his case for regular appointment to Group 'C' post on the basis of his long service in Group 'C' post.

11. Relying, therefore, on the decision of this Court in the case of Inder Pal Yadav (supra) the present appeal is partly allowed by modifying the orders of the Central Administrative Tribunal and of the High Court. It is directed that the appellant's pay which he was last drawing on the date of his repatriation from Group 'C' post to Group 'D' post, shall be protected. It is further directed that appellant shall be considered for promotion to Group 'C' post in his turn with others, with due regard to the fact of his having passed the screening test and his work and performance for long twenty years on the post of Rigger in Group 'C'."

12. Respondent has filed response to the instant petition and submitted that petitioner was working on contract basis as a Vendor since 28.08.1970 in Worker Canteen of 505 Army Base Workshop in the pay scale of Rs.70-85 on a contract basis and he was not a Govt. employee.

13. Thereafter, Govt. of India, Ministry of Defence issued letter dated 09.12.1981 by declaring that the employee of Canteen would be as Govt. Employee w.e.f 22.10.1980. This order was implemented to all Canteen Workers throughout the country. Therefore, petitioner was declared as Govt. Employee only w.e.f 22.10.1980.

14. In view of the above order, petitioner was appointed as Vendor on 22.10.1980 in the pay scale of Rs.196-232 from the date of

inception of Govt. employee. He was further promoted to Assistant Supervisor – cum – Cashier in the pay scale of Rs.210-290 w.e.f 10.02.1981. The pay of the petitioner was fixed under Article 156A CSR and was fixed at Rs.218 p.m. w.e.f 10.02.1981 as per existing Rules. The pay of the petitioner was further revised at 800-1150 and his pay was fixed at Rs.890/- w.e.f 01.01.1986 under Revised Pay Rules, 1986.

15. Thereafter, he was promoted to Canteen Supervisor Gr.-III to Assistant Supervisor-cum-Cashier in the pay scale of Rs.950-20-1150-EB-25-1500. His pay scale was further revised under RRR, 1996 i.e. Rs.950-1500 to Rs.3050-4590/- and pay was fixed at Rs.3,350 p.m. as on 01.01.1996 with next date of increment w.e.f 01.01.1997.

16. It is further stated in the counter-affidavit that petitioner was granted two promotions during his service and his pay has correctly been fixed. Even being non-eligible for ACP, he was granted 2nd ACP of Rs.4000-6000 w.e.f 10.02.2005. The petitioner was not satisfied with this and stated that Sh. Mohinder Singh, Canteen Supervisor Gr.III of CVD, Delhi Cantt. was drawing more pay than him though he was junior to him.

17. After hearing Id. Counsel for the parties, it is emerged that initially petitioner was working on a contract basis in Unit Canteen. Thereafter, vide decision dated 09.12.1981, the employees of the Canteen were declared as Govt. employee w.e.f 22.10.1990. The petitioner is comparing with the Grade of 'Cook' which is different cadre, however, he has not established his case, as to how the

respondent has gone wrong while fixing his pay scale. Moreover, the respondents had taken decision time to time on revision of pay since 1981. Petitioner continued to accept the pay scale given by the respondent.

18. Cadre of the 'Cook' and 'Canteen Supervisor' is different altogether. Their nature of job is also different. Therefore, cannot be equated at par. Moreover the petitioner got 2 ACPs and revision of pay time to time.

19. Petitioner is claiming that he was duly appointed by the respondent as Vendor in the year 1970, further promoted as Assistant Canteen Supervisor-cum-Cashier in the pay scale of Rs.110-180 on 14.02.1981 before becoming a Govt. employee.

20. Subsequently, petitioner was granted Rs.250 in a grade of Supervisor on 05.01.82 in accordance with the Revision Rules and Instructions on the subject existing at that time. Thereafter, all the Canteen Employees of Defence Establishment were declared as Govt. employees w.e.f 22.10.1980. Further, their pays were revised, but the petitioner's pay was fixed vide order 21.09.1982 fixed at Rs.214/- was wrong, whereas it would have been fixed at Rs.250/-.

21. The aforesaid decision was taken way back in 1981 and thereafter pay was fixed vide order dated 21.09.1982. The petitioner, first time challenged vide O.A. in 2004 by seeking to correct the decision taken in the year 1982.

22. In my considered opinion, the pay of the petitioner was correctly fixed by considering him a Govt. employee w.e.f 22.10.1980. Petitioner cannot be considered as Govt. employee w.e.f 1970, since

the petitioner has not challenged the order dated 21.09.1981 for such a long period i.e. more than 23 years. First time he filed O.A. before the Central Administrative Tribunal in the year 2004, belatedly.

23. Therefore, instant petition is dismissed on merit, delay and latches as well.

24. No order as to costs.

SURESH KAIT, J

JULY 30, 2012

jg