

GAHC010090762019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2745/2019

MITHLESH KUMAR DEVEDI

S/O- LT SHRI SHRIRAM DEVEDI, R/O- EASTER BASE WORKSHOP, DIST-
SONITPUR, ASSAM, PRESENTLY SERVING AS LEADING HAND (ADM) AT
EASTERN BASE WORKSHOP (GREF), C/O 99 APO, PIN- 782124

VERSUS

UNION OF INDIA AND 4 ORS.

REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI- 110001

2:THE SECRETARY

BORDER ROADS DEVELOPMENT BOARD
B WING 4TH FLOOR
SENA BHAVAN
NEW DELHI- 110001

3:THE SECRETARY

DEPTT. OF PERSONNEL AND TRAINING
MINISTRY OF PERSONNEL
PG AND PENSIONS
NEW DELHI- 110001

4:THE DIRECTOR GENERAL BORDER ROADS

SEEMA SADAK BHAVAN
RING ROAD DELHI CANT.
NEW DELHI- 110001

5:THE CHIEF ENGINEER EASTERN BASE WORKSHOP C/O 99 AP

Advocate for the Petitioner : MS. P BARUAH, MR A DASGUPTA, J U AHMED

Advocate for the Respondent : ASSTT.S.G.I., MS. B SARMA (C.G.C.)

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 02.08.2024

Date of Judgment : 02.08.2024

Judgment & order(Oral)

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Heard Mr. A. Dasgupta, learned senior counsel, assisted by Mr. J. U. Ahmed, learned counsel, appearing on behalf of the petitioner. Also heard Ms. B. Sarma, learned CGC, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present proceeding, has raised a grievance with regard to the discrimination meted out to him in not authorizing the scale of pay of Rs. 5000-8000/- p.m., retrospectively, w.e.f. 01.01.1986 by maintaining parity of posts of Leading Hand (Non-Technical) [now rechristened as Leading Hand (Admn.)] with that of Overseer in the same organization.

3. The petitioner, in the present proceeding, was initially appointed in the General Reserve Engineering Force(GREF), on 22.08.1988, as a Pioneer with the qualification of matriculation. The case of the petitioner was, thereafter, considered for promotion to the post of Painter and accordingly, on being so recommended by the Departmental Promotion Committee(DPC), he came to be promoted as a Painter, w.e.f. 05.09.1996. The petitioner, herein, on clearing the Trade Test as mandated, came to be promoted to the post of Leading Hand(Non-Technical) [which has now been re-designated as a Leading Hand (Admn.)].

4. The petitioner, herein, contends that given the manner in which the

promotions are so effected; an incumbent in the post of Painter, was promoted to the post of Leading Hand (Non-Technical) while a person in the post of Mason was so promoted against the post of Overseer. The incumbent promoted from the post of Mason to the post of Overseer, on his such promotion; was being authorized the scale of pay of Rs. 5000-8000/- p.m. w.e.f. 01.01.1996. However, a Painter, on his such promotion to the post of Leading Hand (Admn.), was not extended with the said scale of pay i.e. Rs. 5000-8000/- p.m. and his pay was so fixed at a lower scale of pay.

5. The petitioner, by contending that the nature of work discharged by an incumbent in the post of Leading Hand (Admn.) and those in the post of Overseer being similar along with identical nature of duties; the petitioner could not have been denied the scale of pay of Rs. 5000-8000/- p.m. as authorized to the post of Overseer.

6. The petitioner, in this connection, by relying upon the decision of a co-ordinate Bench of this Court in the case of ***Ghanashyam Vishwakarma v. Director General, Border Roads Organization & ors.***, reported in **2010 (5) GLT 243**; has prayed that he be also extended the benefit as was extended to the non-Diploma Overseers in terms of the said decision of this Court.

7. The petitioner, herein, had approached the respondent authorities praying for upgrading the scale of pay as authorized to him in terms of the recommendations of the 6th Central Pay Commission and the same not having been so considered by the respondent authorities; the petitioner has instituted the present proceeding.

8. Mr. Dasgupta, learned senior counsel appearing for the petitioner, by reiterating the service particulars of the petitioner, as noticed hereinabove, has contended that the non-Diploma Overseers were being authorized a scale of pay of Rs. 4500-7000/- p.m., while in the same cadre; the diploma holder Overseers were so authorized the scale of pay of Rs. 5000-8000/- p.m. w.e.f. 01.01.2006. The non-Diploma Overseers, being aggrieved; one of them had instituted proceedings before this Court in **Ghanashyam Vishwakarma** (supra) and this Court, vide order, dated 10.09.2010, had disposed of the said writ petition by holding that the non-Diploma Overseers would also be entitled to have their pay fixed in the scale of pay of Rs. 5000-8000/- p.m. w.e.f. 01.01.2006.

9. Mr. Dasgupta, learned senior counsel, has further contended that the non-Diploma Overseers having been authorized the scale of pay of Rs. 5000-8000/- p.m.; the petitioner, herein, working against the post of Leading Hand (Admn.), would also be required to be authorized the said scale of pay of Rs. 5000-8000/- p.m. w.e.f. 01.01.1996, in terms of the directions passed by this Court in the case of **Ghanashyam Vishwakarma**(supra).

10. Mr. Dasgupta, has also contended that given the manner of promotion to the posts of Leading Hand(Admn.) and Overseer; it is seen that the incumbents in the feeder cadre for promotion to the said posts, are similarly placed and were being authorized a similar scale of pay. In other words; the incumbents in the cadre of Painter and Mason which forms the feeder cadre for promotion to the posts of Leading Hand(Admn.) and Overseer, respectively, are placed in the same scale of pay and accordingly, on their such promotion to the posts of Leading Hand(Admn.) and Overseer; no discrimination was required to be meted out to such incumbents only on the count that the

nomenclature of the post so held by them, were different.

11. Mr. Dasgupta, learned senior counsel, in support of his claim, had submitted that the incumbents, both, in the posts of Leading Hand (Admn.) and Overseer, are promoted to the rank of Superintendent and therein, they also draw the same scale of pay. Accordingly, the learned senior counsel submits that the discrimination in authorizing the scale of pay to the incumbents in the post of Leading Hand (Admn.) in comparison to that authorized to the incumbents in the post of Overseer; requires an interference by this Court with a further direction to the respondent authorities to maintain parity in the matter between the incumbents in the said 2(two) posts.

12. Mr. Dasgupta, learned senior counsel, has submitted that on account of the said disparity; the difference in the pay and allowances drawn by an incumbent in the post of Leading Hand (Admn.) in comparison to that so drawn by an incumbent in the post of Overseer, had further widened on implementations of the 7th Central Pay Commission.

13. In the above premises, Mr. Dasgupta, learned senior counsel appearing on behalf of the petitioner; has contended that this Court would be pleased to direct the respondent authorities to authorize to the petitioner, the scale of pay of Rs. 5000-8000/- p.m., retrospectively, w.e.f. 01.01.1996, along with all consequential benefits.

14. Per contra, Ms. Sarma, learned CGC, has submitted that the recommendations of the 6th Central Pay Commission, had mandated that the diploma scale of pay of Rs. 5000- 8000/- p.m., was required to be applied to

all posts wherein one of the eligibility criterias, prescribed for recruitment, was the possession of the candidate concerned of a diploma in the particular Trade. It is contended that the Recruitment Rules do not prescribe the possession of a diploma in the concerned Trade as one of the eligibility criterias for recruitment to the post of Leading Hand (Admn.) and accordingly, the diploma scale of pay of Rs. 5000/- to 8000/- p.m., cannot be extended to the post of Leading Hand (Admn.).

15. Ms. Sarma, learned CGC, has further contended that while the Overseers are engaged for performing the duties of mustering of casual paid labourers and supervising the civil engineering works related to construction of roads, bridges and buildings; the duties attached to the post of Leading Hand (Admn.) relates to security of Unit area, discipline of troops, liaison duties and other duties related with general administration and man management. It is, accordingly, contended that the nature of duties as attached to the posts of Leading Hand (Admn.) and to that of the post of Overseer being, admittedly, different, both in nature and in responsibility; no comparison between the said 2(two) posts, would be called for.

16. Ms. Sarma, learned CGC, has submitted that in pursuance to the directions passed by this Court; incumbents in the posts of Overseer, Charge Mechanic and Charge Electrician were authorized the diploma scale of pay of Rs. 5000-8000/- p.m., although, such incumbents who were promoted from the feeder posts, did not have a diploma in the concerned Trade. The learned CGC has further submitted that the Diploma scale of pay was never extended to any other posts wherein the minimum requisite eligibility criteria for recruitment against such posts, was not prescribed as a Diploma in Engineering in a particular Trade.

17. In support of the above submissions; Ms. Sarma, learned CGC, has referred to a decision of the High Court of Delhi in the case of ***Ram Avtar Prajapati & ors. v. Union of India & ors.***, [WP(c)1724/2014]; wherein, persons similarly situated like the petitioner, herein, and working as Leading Hand (Admn.), had approached the Court, praying for being extended the scale of pay as attached to the post of Overseer. It is contended that the Court upon consideration of the grievance made in the said matter, had rejected the claim of the petitioners, therein; holding that no parity could be maintained between a Non-Technical post and a Technical post.

18. In the above premises, Ms. Sarma, learned CGC, has contended that the claim of the petitioner in the present proceeding, cannot be countenanced and accordingly, this writ petition is required to be dismissed.

19. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

20. At the outset, it is to be noted that the petitioner, herein, who is working as a Leading Hand (Admn.), does not possess a Diploma in Engineering. The grievance of the petitioner, herein, is that, there being parity in the scale of pay as attached to the post of Painter and Mason; the said parity was not maintained on the promotion of a Painter to the post of Leading Hand (Admn.) and on such promotion, a Painter came to be authorized the pay and allowances at a lower scale of pay in comparison to that so attached in respect of a Mason promoted to the cadre of Overseer. It is to be noted that the 6th Central Pay Commission in its recommendations, had attached a scale of pay of Rs. 5000-8000/- p.m., to all posts, wherein, a Diploma in Engineering is mandated as one of the eligibility criterias for recruitment. The recruitment

conditions for various posts figuring in Group C and D of the General Reserve Engineering Force(GREF); were regulated by the provisions of the General Reserve Engineering Force Group 'C' and 'D' Recruitment Rules, 1982. In terms of the said Rules of 1982; the eligibility conditions for recruitment to the post of Overseer, was prescribed as under:

“Essential: (i) Civil Engineering Diploma/Licentiate or equivalent OR Matriculate or equivalent with possessing Overseer Certificate from ITC/ITI/NCTVT/Defence Trade Certificate with 1 year experience in Civil Engineering construction. Successfully completed Overseers(B/R) course or approximately 19 months from CME Kirkee OR (ii) Matriculate or equivalent with 3 years experience in Civil Engineering Construction.”

21. At this stage, it is to be noted that in terms of the said Recruitment Rules of 1982; the posts in the cadre of Overseer, were required to be filled up, both, by way of direct recruitment as well as by way of promotion. In respect of persons appointed to the post of Overseer by way of direct recruitment, the minimum requisite qualification was a Diploma in Engineering. It is seen that even after the implementation of the recommendations of the 6th Central Pay Commission; an attachment of the Diploma scale of pay of Rs. 5000-8000/- p.m. to the post of Overseer, the said scale of pay was not being authorized to the persons promoted to the post of Overseer from the feeder cadres who did not possess a Diploma in Engineering. Being aggrieved; a non-Diploma Overseer Shri Ghanashyam Vishwakarma approached this Court by way of instituting a writ petition being WP(c)51/2009, raising grievance with regard to the discrimination as meted out to the incumbents in the cadre of Overseer, on the ground of the qualification possessed by them, when there was no dissimilarity in the nature of the duties so discharged by the Diploma holder Overseers and the non-Diploma holder Overseers.

22. A coordinate Bench of this Court, on consideration of the issue arising in the connected writ petition being WP(c)51/2009, was pleased, vide order,

dated 10.09.2010 [reported in 2010(5) GLT 243], to direct the respondent authorities to revise the scale of pay of the petitioner, therein, and to authorize him, the scale of pay of Rs. 5000-8000/- p.m. with effect from the date, the Overseers with Diploma in Engineering, were so authorized, the said scale of pay. It was noticed by this Court in the said order, that the petitioner therein, was denied the scale of pay of Rs. 5000-8000/- p.m. only on the ground that he did not possess the Diploma in Civil Engineering.

23. It is to be noted herein that this Court had concluded that the duties discharged by a Diploma holder in Engineering in the cadre of Overseer and that so discharged by a non-Diploma holder in Engineering, posted in the same cadre, were similar, in all aspects. The said decision rendered in the case of **Ghanashyam Vishwakarma**(supra) was assailed by the respondents, herein, before a Division Bench of this Court by way of instituting a writ appeal being W.A. 19/2020. This Court, vide order, dated 18.03.2011 [reported in 2011 (3) GLT 431]; on consideration of the issues so arising therein, was pleased to dismiss the said writ appeal by upholding the decision of the co-ordinate Bench of this Court in the case of **Ghanashyam Vishwakarma**(supra).

24. In pursuance to the directions as passed by this Court in the matter; the non-Diploma holders in Engineering in the posts of Overseer, were also extended with the benefit of scale of pay of Rs. 5000-8000/- p.m.. Having noticed the manner in which the non-Diploma holders in Engineering in the post of Overseer, were so authorized the Diploma scale of pay of Rs. 5000-8000/- p.m.; the grievance of the petitioner in the present proceeding, is now being so examined. The petitioner while working as a Painter, on clearing the Trade Test involved, was promoted to the post of Leading Hand (Admn.). The manner and method for recruitment to the post of Leading Hand is to be so

effected, is provided under the provisions of the said Recruitment Rules of 1982. A perusal of the Recruitment Rules of 1982, goes to reveal that the post of Leading Hand(Non-Technical) is to be predominantly filled up by way of promotion i.e. to the extent of 80% of the posts and 20% of the posts, is to be filled-up by way of direct recruitment, failing which, the said 20% of the posts would be liable to be filled up by way of promotion and/or deputation/transfer.

25. The educational qualification as prescribed for direct recruitment to the post of Leading Hand (Non-Technical), in the said Recruitment Rules of 1982, is as under:

“Essential: Matriculate or equivalent with 3 years experience in construction works/supervision on labour or man.”

26. A perusal of the said educational qualification would reveal that an incumbent for being considered for direct recruitment to the post of Leading Hand (Admn.), is required to be a matriculate with equivalent years of experience in construction works, supervision of labour or man. The minimum educational qualifications as mandated for being possessed by an incumbent for recruitment to the post of Leading Hand (Admn.), does not provide for possession of such incumbent, of a Diploma in Engineering even for the purpose of recruitment by way of direct recruitment.

27. A comparison of the qualifications prescribed for direct recruitment to the cadre of Leading Hand(Non-Technical) and Overseer, would go to reveal that while for the post of Overseer, a Diploma in Engineering and/or equivalent qualification is prescribed; such prescription is found to be absent in respect of direct recruitment to the post of Leading Hand(Non-Technical). In other words;

it can be said that the Diploma qualification in Engineering, has not been attached for recruitment to the post of Leading Hand(Non-Technical).

28. The 6th Central Pay Commission recommendations having specifically mandated that the scale of pay of Rs. 5000-8000/- p.m. reckoned as a Diploma scale of pay, is to be attached to the post, wherein, the eligibility criterias for recruitment, mandates possession by such candidates of a Diploma in Engineering qualification. Accordingly, against a post, wherein, a Diploma in Engineering is not mandated as a qualification for direct recruitment; the said scale of pay of Rs. 5000-8000/- p.m., would not be applicable. In view thereof, the petitioner being holder of a post wherein the requirement for a candidate for direct recruitment to possess a Diploma in Engineering, being not so prescribed; his claim for being authorized the Diploma scale of pay of Rs. 5000-8000/- p.m., cannot be countenanced.

29. The above conclusions having been drawn; the submissions of Mr. Dasgupta, learned senior counsel for the petitioner, for maintaining parity with the non-Diploma holder Overseers in terms of the decisions of this Court in the case of **Ghanashyam Vishwakarma**(supra), is required to be considered.

30. A perusal of the facts as involved in the case of **Ghanashyam Vishwakarma**(supra), would go to reveal that in the cadre of Overseer, while direct recruits were required to possess a Diploma in Engineering and/or equivalent qualification; such a prescription was not so mandated for promotees to the said cadre. However, on recruitment to the said cadre of Overseer, either, by way of direct recruitment, or, by way of promotion; an incumbent in the said cadre was required to discharge similar nature of duties and also to shoulder similar responsibility. This Court, having noticed the said

position; had proceeded to direct that the non-Diploma holder in Engineering, working as a regular Overseer, is also to be authorized the scale of pay of Rs. 5000-8000/- p.m., as was authorized to a direct recruit Overseer having Diploma in Engineering qualification.

31. The above being the position and the direction for authorization to the non-Diploma Overseers, the Diploma scale of pay of Rs. 5000-8000/- p.m., being so directed by this Court primarily appreciating the fact that they were discharging duties of similar nature like that of the direct recruit Overseers having Diploma in Engineering qualification, the said aspect of the matter being clearly absent insofar as the post of Leading Hand(Admn.) is concerned, wherein for direct recruitment, the possession by an intending candidate of a Diploma in Engineering is not mandated as an eligibility criteria; the decision of this Court in the case of **Ghanashyam Vishwakarma**(supra) would not advance the case of the petitioner, herein.

32. Accordingly, it is to be held that the decision of this Court in the case of **Ghanashyam Vishwakarma**(supra), would have no application to the facts as involved in the present proceeding.

33. The decision relied upon by the respondents of the High Court of Delhi in the case of **Ram Avtar Prajapati**(supra) having also concluded that the incumbents in the post of Leading Hand (Admn.), not being a part of the technical cadre of the Border Road Organization(BRO); would not be entitled to be extended the same scale of pay as extended to the technical cadre of Overseer. Accordingly, the said decision being in tune with the conclusions as reached by this Court, hereinabove, in respect of the petitioner, herein; would be applicable to the facts as involved in the present case.

34. In view of the above conclusions as reached by this Court; it is held that the petitioner, herein, is not entitled to a direction for being authorized the scale of pay of Rs. 5000-8000/- p.m., w.e.f. 01.01.1996, and accordingly, this writ petition is held to be devoid of merit and therefore, stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant