

GAHC010265712013



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

Case No. : WP(C)/6352/2013

VIJAY KUMAR KEKDAS LAWHATRE and 13 ORS
S/O SHRI KEKDAS LAWHATRE R/ INDORA CHOWK, DR. B.R. AMBEDKAR
MARG, NAGPUR, MAHARASHTRA.

2: SHRI RAJKUMAR BAGDE S/O BHAGWANDAS BAGDE R/O NAGPUR
MAHARASHTRA

3: SRI SUNDARESAN CB S/O BHASKARAN NAIR M L
VINU BHAVAN P.O. NEMOM TRIVANDRUM KERELA PIN- 695020

4: SHRI CV SHRINIVASA VERMA
S/O C.V. PURUSHOTHAM L R/O HOUSE NO. 1-19-83/61
CHANDRA PURI COLONY KAPRA P.O. ECIL I HYDERABAD A.P.

5: SHRI ROSHAN LAL
S/O MAHADEV PRASHAD CHAMOLI L R/O MALIYAKOT
RADHUDHAR TEHRI GARHWAL UTTARAKHAND.

6: SHRI SATPAL MANKOTIA SHER SINGH L TIARA
DIST. KANGRA HIMACHAL PRADESH PIN- 176214.

7: SHRI BHAGWAN SINGH S/O SHOBHA RAM PRADSEEP
VILL- SALEMPUR VIA- HATHRAS JUNCTION
DISTT. HATHRAS U.P. PIN- 204102

8: RAJ KUMAR SHARMA S/O CHAMAN LAL VILL and P.O. BAIJNATH DISTT.
KANGRA HIMACHAL PRADESH.

9: SHRI KARNA KOTESWARA RAO S/O SH. SANKARAI AH R/O VILL and
P.O. GUDUR TEHSIL GUDUR DISTT. NELLORE A.P.

10: SHRI SURESH KUMAR S/O SH. SIYA RAM P.O. BALRANGRAN
DISTT. KARNAL HARYANA.

11: SATYA PAL SINGH
S/O SHRI MEWA RAM VILL- TANDA P.O. HASAN PUR LUHARI DIST.
MUZAFFAR NAGAR UTTAR PRADESH.

12: SHRI KULWANT SINGH S/O HARKEWAL SINGH R/O H. NO. 270
STREET NO. 8 RAJINDER NAGAR DEHRADUN UTTARAKHAND.

13: MUNNA LAL
S/O SHRI AMRIT SINGH R/O VILL- SARASWA P.O. DAURALA
DIST. MEERUT UTTAR PRADESH.

14: SHRI VIJENDRA PAL SINGH
S/O LT. SHRI H.L.NAGAR R/O SHIVLOK COLONY SURYA VIHAR QUARSI
BYE PASSA ALIGARH UTTAR PRADESH

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS,
BORDER ROADS DEVELOPMENT BOARD, B-WING, 4TH FLOOR, SENA
BHAWAN, NEW DELHI.

2:SECRETARY THE GOVT. OF INDIA
MINISTRY OF DEFENSE FINANCE/BORDER ROAD SOUTH BLOCK NEW
DELHI- 110011.

3:THE DIRECTOR GENERAL BORDER ROAD SEEMA SADAK BHAVAN
RING ROAD DELHI CANTT. NEW DELHI-110010.

4:THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUTS BORDER ROADS
SEEMA SADAK BHAVAN NARAYANA NEW DELHI- 110010

Advocate for the Petitioner : MR.B BASUMATARY, MR.S K SINGHA,MR.M G
SINGH,MRSSHEELA KH.,MR. U SARMA,MR H BEZBARUA,MR. R MAZUMDAR

Advocate for the Respondent : MR.S SARMA, ,ASSTT.S.G.I.,SR. CGC

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

Date of hearing : 05.09.2024

Date of Judgment : 12.11.2024

Judgment & order(CAV)

Heard Mr. Rajesh Mazumdar, learned counsel for the petitioners. Also heard Mr. Biplav Chakravarty, learned CGC, appearing on behalf of all the respondents.

2. The petitioners by way of instituting the present proceeding, have prayed for a direction for authorizing to them, the pre-revised scale of pay of Rs. 5000-8000 w.e.f. 01.01.1996 and the revised scale of pay of Rs. 9300-34800 along with Grade Pay of Rs. 4200/-, coming into force in terms of the recommendations of the 6th Central Pay Commission.

3. As projected in the writ petition, the petitioners, herein, were all recruited as Radio Mechanic in the General Reserve Engineering Force. Thereafter, the petitioners on their selection, came to be promoted to the post of Chargeman (Signal). The post of the Chargeman(Signal) was thereafter, re-designated as Chargeman(Communication). In the Recruitment Rules, more specifically, the General Reserve Engineering Force Group "C" and "D" Recruitment Rules, 1982; the recruitment to the post of Chargeman(Signal) mandated possession by an intending candidate, a qualification of 3 years recognized Diploma Licenciante in Electronics/Communication/Radio Engineering or equivalent with 1 year experience. The said Recruitment Rules further mandated that the post of

Chargeman(Signal) would be so filled up by way of promotion, failing which, from the Army on posting/transfer and failing thereof, by way of direct recruitment from the post of Radio Mechanic.

4. The petitioners have contended that the post of Chargeman(Signal) being similar to that of Charge Mechanic and the incumbents in the post of Charge Mechanic not having a Diploma, having been authorized the diploma scale of pay of Rs. 5000-8000/- in pursuance of the directions passed in the matter by this Court; the petitioners are also entitled to be authorized the pre-revised pay scale of Rs. 5000-8000 w.e.f. 01.01.1996 along with the revised pay scale of Rs. 9300-34800 and Grade Pay of Rs. 4200/-in terms of the recommendations of the 6th Central Pay Commission.

5. The petitioners have further contended that the processing although made in the matter by the respondent authorities for authorizing to the incumbents in the post of Chargeman(Communication), the diploma scale of pay of Rs. 5000-8000/-, the said process was not taken to its logical conclusion and accordingly, being so constrained; they have instituted the present proceeding seeking for the reliefs as noted, hereinabove.

6. Mr. Mazumdar, learned counsel for the petitioners, has submitted that the General Reserve Engineering Force Group "C" and "D" Recruitment Rules, 1982, having also mandated direct recruitment to the post of Chargeman(Signal)[now, Chargeman(Communication)] of persons having a diploma in the relevant trade; the said post ought to be deemed to be a post to which the diploma scale of pay of Rs. 5000-8000/- is applicable. Accordingly, the petitioners, herein, being holders of the said post, are also

entitled to be authorized the diploma scale of pay at least w.e.f. 01.01.1996 along with the revision thereof in terms of the recommendations of the 6th Central Pay Commission, maintaining parity with that of the posts of Chargeman(Mechanic), Chargeman(Electrical), etc..

7. Mr. Mazumdar, learned counsel, has further submitted that the cases of the petitioners, herein, are covered by the decisions of this Court in the case of **Pramod Singh & ors. V. Union of India & ors.**, vide judgment & order, dated 01.02.2011, in **WP(c)3756/2009**; wherein, the non-diploma holder Charge Mechanics were directed to be authorized the diploma scale of pay by maintaining parity with that of diploma holder Charge Mechanics.

8. Mr. Mazumdar, learned counsel, has also submitted that in terms of the directions passed by this Court in the case of **Pramod Singh**(supra) and other similar matters; the respondent authorities had carried-out an exercise for upgradation of the scale of pay authorized to various posts including the posts of Chargeman(Signal). However, the said process insofar as it concerns the posts of the Chargeman (Signal), was not taken to its logical conclusion, thereby, the petitioners, herein, were deprived of their due scale of pay.

9. Mr. Mazumdar, learned counsel for the petitioners, has submitted that the decision of this Court in the case of **Pramod Singh**(supra), is squarely applicable to the facts of the present case and accordingly, this Court would be called upon to direct the respondent authorities to extend to the petitioners, herein, the diploma scale of pay in tune with the directions passed by this Court in the above-noted matter.

10. Mr. Mazumdar, learned counsel, has also fairly submitted that the persons having diploma in the prescribed trade and holding the post of Chargeman(Communication), have also not been extended the diploma scale of pay.

11. Per contra, Mr. Chakravarty, learned CGC, at the outset, has submitted that in the post of Chargeman (Communication); there is no direct recruitment made and persons are so appointed on their promotion from the post of Radio Mechanic as well as from the post of Assistant Chargeman(Communication). The learned CGC, by referring to the provisions of the General Reserve Engineering Force Group "C" and "D" Recruitment Rules, 1982, has submitted that the direct recruitment to the post of Chargeman(Signal) was provided for only in the event, there was no suitable person found available for being promoted to the said post from the feeder post of Radio Mechanic and/or no person was available to hold the post on transfer from the Army.

12. Mr. Chakravarty, learned CGC, has submitted that the duties discharged by the Charge Mechanic and Chargeman (Electrical) is clearly distinguishable from the duties required to be so discharged by the Chargeman(Communication) and neither, the Pay Commissions, nor, the Government had taken any decision for authorizing to the incumbents in the post of Chargeman(Communication), the diploma scale of pay.

13. Mr. Chakravarty, learned CGC, has further submitted that the decision of this Court in the case of **Pramod Singh** (supra) and other similar matters pertaining to Chargeman (Electrical)/Charge Mechanic, were so rendered

basing on the facts of that case and the same cannot be applied in respect of the post of Chargeman(Communication), both, on account of the nature of the duties required to be so discharged by the Chargeman (Communication) as well as the conditions of recruitment to the said post.

14. In the above premises, Mr. Chakravarty, learned CGC, has submitted that the claims as made by the petitioners, herein, in this writ petition, would not mandate an acceptance.

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

16. It is an admitted position that the petitioners, herein, were initially appointed as Radio Mechanics. Thereafter, they were, on consideration of their respective cases, promoted to the post of Chargeman(Signal). The provisions of the General Reserve Engineering Force Group "C" and "D" Recruitment Rules, 1982, although mandates that for direct recruitment to the post of Chargeman(Signal)[now, Chargeman (Communication)]; the intending candidate is to possess a 3 years recognized Diploma Licenciante in Electronics/ Communication/Radio Engineering or equivalent with 1 year experience., however, the manner of filling up of the said post as provided therein, would go to reveal that the said post is to be so filled-up from amongst the Radio Mechanics at the first instance.

17. The Rules further provides that in the event, there is no person eligible to be promoted to the post of Chargeman (Communication) from the feeder cadre of Radio Mechanic; the said post is called upon to be so

filled up by way of deputation/transfer from the Army. It is only when the said two manner of recruitment is not possible to be resorted to, the said post of Chargeman (Signal) can be filled-up by way of direct recruitment. It is the categorical contention of the respondent authorities that the posts of Chargeman (Communication) were never filled-up by way of direct recruitment.

18. It is also seen that the manner of recruitment to the post of Chargeman(Communication) was subsequently amended and it was provided that the said post would now be required to be filled-up by way of promotion from the cadre of Radio Mechanic having 5 years regular service to the extent of 33-1/3 per cent and from the cadre of Assistant Chargeman (Communication) with 5 years of regular service to the extent of 66-2/3 per cent. Neither, for the post of Radio Mechanic, nor, for the post of Assistant Chargeman(Communication); it is mandated that the candidate intending for recruitment to the said posts, should possess a diploma in the prescribed trade. Accordingly, it is to be held that for recruitment to the post of Chargeman (Signal); a diploma in the prescribed trade is not mandated.

19. At this stage, the reliance placed by the petitioners in the case of **Pramod Singh**(supra), is required to be examined. In the case of **Pramod Singh**(supra); the petitioners, therein, were holding the post of Charge Mechanic and they were initially recruited as Vehicle Mechanic, Welder, Turner and Electrician. Thereafter, they were promoted to the post of Charge Mechanic. The General Reserve Engineering Force Group "C" and "D" Recruitment Rules, 1982, holding the field provided for an avenue of

recruitment by way of direct recruitment to the post of Charge Mechanic and for the purpose of direct recruitment, it was prescribed that the intending candidate is required to possess a diploma in the prescribed trade.

20. The petitioners in the case of **Pramod Singh**(supra), were so recruited to the post of Charge Mechanic by way of promotion and did not possess the prescribed diploma qualification but were so promoted by reckoning the alternative qualification possessed by them along with the prescribed number of years of service in the feeder cadre. The respondent authorities had taken a decision in pursuance of the recommendations of the 6th Central Pay Commission, to extend the diploma scale of pay of Rs. 5000-8000/- to the diploma holder Charge Mechanic. The said diploma scale of pay was, however, not extended to the non-diploma holder in the cadre of Charge Mechanic. The petitioners in the case of **Pramod Singh**(supra), had contended that there was no distinction in the duties, responsibilities and status between the two categories of the posts i.e. the diploma holder Charge Mechanic and the alternative qualification holder Charge Mechanic and accordingly, it was contended that the non-diploma holder Charge Mechanic could not have been deprived of the diploma scale of pay.

21. This Court in the case of **Pramod Singh**(supra) on noticing the fact that both the diploma holder Charge Mechanic directly recruited to the post of Charge Mechanic, as well as the promotees to the post of Charge Mechanic, were discharging similar duties and shouldering identical responsibilities; proceeded to conclude that the prescription of two different scales of pay in the same cadre posts, would not be permissible. The Court had further

noticed that the post of Charge Mechanic having an element of direct recruitment; the diploma scale of pay being applicable, the same could not have been denied to the promotees who were so promoted by reckoning the alternative qualification as prescribed in the provisions of the Rules which were duly possessed by such promotees.

22. The decision of this Court in the case of **Pramod Singh**(supra) given the circumstances considered for passing the directions therein for grant of equal pay for equal work, to even to the non-diploma Charge Mechanic is clearly absent in the case on hand. In the present case; there is no element of direct recruitment to the post of Chargeman(Communication). An incumbent is not called upon to possess the qualification of diploma in the prescribed trade for holding the post of Chargeman(Communication). The said fact further finds support from the categorical contentions of the respondents that there is no direct recruitment made to the post of Chargeman(Communication).

23. Accordingly, in view of the distinguishing factors present in the present proceeding; this Court is of the considered view that the decision of this Court in the case of **Pramod Singh**(supra) and other similar matters, pertaining to the posts of Chargeman(Mechanic), Chargeman(Electrical), etc., cannot be applied to the present case.

24. The petitioners while claiming to be authorized their pay and allowances in the diploma scale of pay and the revision thereof; have not brought on record any material to demonstrate that the nature of duties and the responsibilities discharged by the Chargeman(Communication) is

similar to that of the duties and the responsibilities so discharged by the incumbent in the post of Chargeman(Mechanic).

25. The respondents, on the contrary, had contended that the duties and the responsibilities required to be discharged by an incumbent in the post of Chargeman(Communication) is clearly distinct from the duties and the responsibilities so required to be discharged by an incumbent in the post of Chargeman(Mechanic).

26. In the absence of any material being brought on record to demonstrate the equivalence of the posts of Chargeman (Communication) and Chargeman(Mechanic); this Court is not in a position to proceed to determine that both the posts, noted-above, are equivalent, by applying the required parameters and accordingly, on this count also, the prayers of the petitioners for being granted equal pay for equal work, in comparison to the post of Chargeman(Mechanic) can also not be accepted by this Court on merits.

27. It is the settled position of law that ordinarily, in the matter of fixation of pay, the same should be left to be determined by the executive authorities and the Court would only interfere when it finds that the classification is improper or discriminatory.

28. The facts as available in the matter does not reflect that the petitioners, herein, are similarly placed like that of the Chargeman(Mechanic) or the Chargeman(Electrical). The respondent authorities not having extended the diploma scale of pay to the post of

Chargeman(Communication) and it having not been demonstrated by the petitioners, herein, that there are also incumbents existing in the said post who were recruited directly with the diploma qualification; it cannot be held that the post of Chargeman(Communication) mandatorily requires an incumbent to possess a diploma qualification for being appointed by way of direct recruitment. It is also not the case of the petitioners, herein, that the persons having a diploma qualification and recruited as Chargeman (Communication) were being authorized the diploma scale of pay.

29. In view of the above position, this Court is of the considered view that the petitioners have not made out a case for entertaining their claims for being authorized the pre-revised scale of pay of Rs. 5000-8000/- along with the revised scale of pay of Rs. 9300-34800/- with Grade Pay of Rs. 4200/-.

30. In view of the above; this writ petition is held to be devoid of any merit and consequently, the writ petition stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant