

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10757 of 2010

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M.M.P. Sinha, S/o Late Justice B.P. Sinha A Retired Railway Servant, R/o
'Vishnupada', Nageshwar Colony, Boring Road, Patna-800001

.... Petitioner/s

Versus

1. Union of India, Through Secretary, Department of Expenditure, Ministry of Finance, North Block, Raisina Hills, New Delhi
2. Ministry of Personnel, Public Grievances and Pension Through The Secretary, Department of Pension and Pensioner's Welfare Lok Nayak Bhawan, Khan Market, New Delhi
3. Ministry of Railways Through Chairman, Railway Board, Rail Bhawan, New Delhi
4. Railway Board, Through Secretary, Rail Bhawan, New Delhi

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. M.M.P. Sinha (In Person)
For the Railways	:	Mr. D.K. Sinha, Sr. Advocate
		Mr. Anil Singh.
For the Union of India	:	Mr. Sanjay Kumar, A.S.G.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 18-05-2015

A very simple but ticklish issue arises in this writ petition. The issue is whether a person retiring from a higher grade can receive pension less than a person retiring in the lower grade. Is it not arbitrary and in view of the Judgment of the Hon'ble Apex Court in the case of *Union of India and Another Vrs. SPS Vains (Retd.) and Others since reported in (2008) 9 SCC 125*, the pension of the person in the higher grade would have to be stepped up accordingly.



The contesting respondents are the Union of India through the Secretary, (Department of Expenditure), Ministry of Finance, Ministry of Personnel, Public Grievances and Pension as also Ministry of Railways through the Chairman and the Secretary. There are supplementary affidavit, counter affidavit and supplementary counter affidavit after several adjournments.

We have heard learned counsel for the writ petitioner, who appears in person, and learned counsel for the Union of India as well as Railways.

The facts are not, at all, in dispute. The petitioner retired in 1992 from the services of Indian Railways as Additional General Manager, Eastern Railway, Kolkata. At the time of his retirement, he was an officer in Higher Administrative Grade (HAG). Let it be noted that Government of India classified its staff in 33 scales and one exclusive scale for Cabinet Secretary. In so far as relevant S-28, S-29, S-30 and S-31 are scales corresponding to Selection Grade, Senior Administrative Grade, High Administrative Grade and High Administrative Grade+. As per recommendation of the 6th Pay Commission, Central Government declared scale for PB-4 which was for Selection Grade [SG] (S-28), Senior Administrative Grade [SAG] (S-29), High Administrative Grade [HAG] (S-30) as 37,400-67,000 but provided for Grade Pay

for each scale separately at 8,700; 10,000 and 12,000 respectively. But later S-30 was taken out of PB-4 and a separate pay band was provided for it being HAG Scale 67,000-79,000 but while doing so vide circular of Ministry of Railways dated 26.05.2009 Grade Pay of 12,000 for HAG was removed.

As the petitioner had retired in 1992, as per Railway Board's notification, petitioner's notional pay was fixed at the minimum of HAG (S-30) being 67,000 without Grade Pay. The result was his pension was then fixed at 50% thereof being 33,500. On the other side, a person in (SAG) Grade S-29, which is an inferior and feeder grade for S-30, the Pay Band is 37,400-67,000 but there is a Grade Pay entitlement of Rs. 10000/-. Accordingly, petitioner points out that the maximum pension that can be paid in Grade S-29 would be Rs. 67000 + 10000 = 77000/- and half of it (50%) would be Rs. 38,500/-. Thus, seen on the face of it, a person retiring in Grade S-29 at the maximum scale would get not only higher remuneration but consequently, higher pension than Grade S-30, for which it was feeder post both in terms of remuneration and pension. This is hostile discrimination, arbitrary and improper. Briefly submitted a junior cannot get higher remuneration or pension than a senior. In order to contradict the objection of the Central Government and the Indian Railways that this is mere a



theoretical submission, petitioner has filed a supplementary affidavit giving facts and figures. He has given names and designations of at least three officers of the Railways, who have retired on different dates in the Senior Administrative Grade with Grade Pay in the scale of S-29 as against the petitioner, who was in the Higher Administrative Grade. They are receiving pension between Rs. 35690/- and Rs. 36640/-. Even though he is of Higher Administrative Grade, his pension is fixed at maximum of Rs. 33500/-. He has then in the said supplementary affidavit given names of at least eight other persons, who again would be retiring from Senior Administrative Grade in near future and their pension would ordinarily be at Rs. 38500/- as against the petitioner of Rs. 33500/-. Petitioner, thus, in theory and practical, has shown the discrepancy i.e. capable of happening and also happening. In fact, he submits that this is a clear case of impermissible discrimination and is violative of Article 14 of the Constitution of India.

There is no counter affidavit filed on behalf of the Government of India in the Department of Public Grievances and Pension. There is counter affidavit and supplementary counter affidavit by the Railways but it seems Railways have been entrusted to defend the case by the Government of India. Their only defence is that petitioner had retired prior to 2006 whereas; the

cases illustrated by him, are cases of persons, who retired after 01.01.2006 or are yet to retire. This, accordingly, is reasonable classification for lower pension in the higher Grade.

In other words, the only explanation given is retirement at different times but there is no explanation as to why a person of a higher grade will get pension less than of a junior grade. The factual assertion of this dichotomy, as pointed out by the petitioner, has not been challenged. It is submitted that earlier for Grade S-30, there was a Grade Pay of Rs. 12000/- So long as the Grade pay was there, there was no problem as the maximum pay entitlement of S-29 would be Rs. 67000 + 10000 = 77000/- whereas; the minimum of S-30 would be Rs. 67000 + 12000 = 79000/-. Therefore, there would always be a difference in between two. But when the Central Government in 2009 decided to remove the Grade Pay for S-30 and onwards there would be a clear dichotomy when pension calculations are made, as shown above. The petitioner has further brought to our notice to a very unhappy situation that would also arise. The maximum pay, as noticed above, of S-29 would be Rs. 67000 + 10000 = 77000/- A person, who is in S-29 reaching the maximum level is then promoted to Higher Administrative Grade from Senior Administrative Grade. In S-30, there being no Grade Pay, he would come to the basic pay of

that grade i.e. 67000/-. Effectively, his remuneration upon promotion would stand reduced by Rs. 10000/- and in such an event, he would have to be given a pay protection upon promotion because in absence thereof, the result would be quite ridiculous. It is direct consequence of this that there is anomaly in pension. Respondents' only defence is that this anomaly is inherent in the system and inherent in the pay and pay structure as fixed with effect from 01.01.2006. The question is whether inherent, apparent or latent discrimination is permissible. In our view, the short answer is that it cannot ever be permissible. A person in the Higher Administrative Grade cannot draw less remuneration or less pension than a person of the Senior Administrative Grade which grade is the Feeder Grade for the Higher Administrative Grade. This is exactly what is happening in the present case. This is exactly what has been deprecated by the Hon'ble Apex Court in the case of *Union of India and Another Vrs. SPS Vains (Retd.) and Others (Supra)*. There it was noticed that the Brigadier in the Army was receiving higher pension than the Major General. Brigadier, is the Feeder post for Major General. The Hon'ble Supreme Court held that the only way out for the Central Government was to step up the pension of Major General so that this discrimination of junior getting higher pension than a Senior is removed.



Neither learned counsel for the Union of India nor the counsel for the Indian Railways is able to distinguish the said decision of the Hon'ble Apex Court. Apart from saying that the said decision was based on pay basic scale, service conditions of defence services which are different from other civil services, there was no other distinction. It is the principle of law decided that is to be considered. The principle of law, as decided by the Hon'ble Apex Court, is plain and simple; that a senior officer cannot get pension less than his junior. If that be, the effect of pay fixation than the pension would have to be stepped up to avoid such hostile discrimination. There was no consideration of defence service or any special feature of defence service as distinguishing civil services. The distinction pointed out is illusory.

Hence, having considered the matter, the facts not being in dispute, as noted above, and the law not being in disputed, as noted above, the result is that the writ petition must succeed and the Judgment and order of the Central Administrative Tribunal, Patna Bench, Patna has to be set aside. It has to be held that the basic pension of the petitioner with effect from 01.01.2006 has to be stepped up to Rs. 38,500/- to avoid discrimination. Respondent no.3, Ministry of Railways through the Chairman Railway Board and Respondent no.4, Railway Board through Secretary are given

three months time to calculate the arrears of pension accordingly
and pay the same within the said period.

This writ petition is, accordingly, allowed.

(Navaniti Prasad Singh, J.)

(Rajendra Kumar Mishra, J.)

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