

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

+ **W.P.(C) No.4954/2002**

% **19th May, 2015**

A.A. KHAN(SINCE DECEASED) THROUGH HIS L.RS. Petitioner
Through: Mr. Atul Varma, Advocate.

Versus

GAS AUTHORITY OF INDIA LTD. & ANR. Respondents
Through: Mr. Bhupendra S. Chauhan, Advocate
with Mr. N.S. Khurana, Dy. Manager
(Law) and Mr. A.K. Thapa, Dy.
Manager (HR) for respondent No.1.
Mr. Anuj Aggarwal, Advocate with
Mr. Dheeraj, Advocate for respondent
No.2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner/Head Constable who was on deputation from respondent no.2/Central Industrial Security Force (CISF) with the respondent no.1/Company/Gas Authority of India Ltd (GAIL), seeks

quashing of the action of the respondent no.1 in making the recovery of Rs.1,64,420/- in terms of the Office Memorandum dated 24.4.2001 on account of the alleged excess payment from June,1997 to December, 2001.

2. The facts of the case are that the petitioner was a Head Constable in respondent no.2/CISF and he joined the respondent no.1/GAIL on deputation on 3.6.1997. At the time of his appointment with the respondent no.1, respondent no.1 gave the petitioner an option as to whether the petitioner wanted the pay-scale of the respondent no.1/Company or of the respondent no.2/CISF, and to which petitioner exercised the option of taking the pay-scale of respondent no.1/GAIL. Respondent no.1 accordingly fixed petitioner's pay in terms of the pay-scale of similarly placed persons falling in S-3 grade of the respondent no.1. Petitioner's pay with the respondent no.1 was therefore fixed at Rs.4,559/- with the basic pay as Rs.2,904/- and DA at Rs.1,655/-.

3. There took place negotiations between the management of GAIL and GAIL Karamchari Sangh and this resulted in the Memorandum of Understanding (MOU) dated 10/13.11.2000 whereby the existing pay-scales of employees of the respondent no.1 were agreed to be revised w.e.f 1.1.1997. The relevant para of this MOU reads as under:-

“The existing incumbents in the pre-revised grades of S-1, S-2, S-3, S-4, S-5 and S-6 will be placed in the revised grades of S-2, S-3, S-4, S-5, S-6 and S-7 respectively on 1.1.97 or on the date of Appointment in respect of new appointees joining after 1.1.97 and their pay in the revised pay structure shall be fixed accordingly”

4. Respondent no.1 accordingly upgraded the grades of pay of categories of persons of S-1 to S-6 to S-2 to S-7 grades. Petitioner was in S-3 grade and accordingly his pay-scale was revised to S-4 grade.

5. Respondent no.1 claims that benefit of this MOU dated 10/13.11.2000 could only be given to GAIL employees and since petitioner was not an employee of GAIL/respondent no.1 hence recovery was sought to be made from the petitioner in terms of the Office Memorandum dated 24.4.2001 for the amount of Rs.1,64,420/- and which action is challenged in the writ petition.

6. In my opinion, on behalf of the petitioner, it is rightly argued that once the admitted fact is that petitioner was governed by the pay-scales of the employees of the respondent no.1/GAIL, and as per the MOU dated 10/13.11.2000, S-3 grade employees of GAIL got enhanced pay of S-4 grade, petitioner's pay-scale was also rightly therefore enhanced from S-3 grade to S-4 grade. I may clarify that on behalf of the petitioner, it is conceded that petitioner does not claim promotion to the higher post of S-4

but only claims the pay-scale of the S-4 grade in terms of the agreement recorded in MOU dated 10/13.11.2000. It is therefore clear that once petitioner was admittedly given the option of taking the pay-scales of respondent no.1 while working on deputation with the respondent no.1 and the petitioner did exercise the option of getting the pay-scales of respondent no.1, on the respondent no.1 granting S-3 grade employees pay-scale of S-4 grade, in such a situation therefore there was no reason why petitioner should also not get pay-scale of S-4 grade.

7. I reject the argument urged on behalf of the respondent no.1 that MOU dated 10/13.11.2000 will not apply to the petitioner who is a deputationist inasmuch as nowhere in the MOU dated 10/13.11.2000 it is stated that for getting the benefit of MOU dated 10/13.11.2000 one will have to be necessarily the employee of GAIL. Admittedly, since petitioner was given the option of taking equivalent pay-scales as those given to employees of GAIL, petitioner therefore cannot be deprived the pay-scale of S-4 grade once similarly placed employees in the respondent no.1 were given pay-scale of S-4 grade pursuant to the MOU dated 10/13.11.2000. In my opinion, though the petitioner has not pleaded the doctrine of 'equal pay for equal work', the same will also come in aid of the petitioner because once

there are identical posts with identical qualifications and identical work, such persons in the identical posts will have to receive same pay-scale on the doctrine of 'equal pay for equal work'.

8. In view of the above, the writ petition is allowed. Action of the respondent no.1 in affecting the recovery of Rs.1,64,420/- is quashed. It is clarified that since the respondent no.1 has now only to recover a sum of approximately Rs.67,000/- from the petitioner this amount will not be recovered by the respondent no.1 from the petitioner and further noting that an amount of Rs.92,082/- was given by the respondent no.1/GAIL to respondent no.2/CISF and this amount of Rs.92,082/- is admittedly already paid to the erstwhile petitioner (now represented by his legal heirs) by the respondent no.2/CISF.

9. The writ petition is allowed and disposed of accordingly. No costs.

MAY 19, 2015
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VALMIKI J. MEHTA, J.