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

+ **W.P.(C) 86/2015**

JEET RAM & ORS.

..... Petitioners

Through: Mr. Shanker Raju, Mr. Nilansh
Gaur, Mr. Pramod Kumar,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Bhagwan Swarup Shukla,
CGSC with Mr. Vinod Kumar
Tiwari, Advocate for respondent
No. 1 to 4.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

07.01.2015

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KAILASH GAMBHIR, J. (ORAL)

C.M. Appl. No. 136/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 86/2015

1. By this petition filed under Article 226 of the Constitution of India, the Petitioners seek to challenge the impugned order dated 11.08.2014, passed by learned Central Administrative Tribunal, Principal Bench, New

Delhi (*hereinafter referred to as "CAT"*), whereby the O.A. filed by them was dismissed.

2. In the present case, the Petitioners were appointed on the post of Constable in Secretariat Security Force (SSF) and retired on the post of Sub-Inspector. They approached the learned CAT seeking direction for revision of their pay scales from Rs.4500-7000 to Rs.5500-9000 w.e.f. 01.01.1996 or from the date of their promotion to the post of Sub-Inspector, whichever is later, equal and at par with that of Sub-Inspectors to their counterpart Sub-Inspectors in CISF. It is a case of these Petitioners that after the grant of parity in the pay scale of constables and head constables in SSF, with their counter parts in the CISF, the case of Sub-Inspectors and Inspectors in CISF also deserve similar parity. Earlier also O.A. No. 2207/2010 was preferred by these Petitioners wherein the learned CAT vide order dated 15.07.2010 gave a direction to the respondents to take a decision for revision of pay scales from Rs.4500-7000 to Rs.5500-9000 w.e.f. 01.01.1996 as had been granted to their counterpart in CISF but by the order dated 10.09.2010 passed by the respondents they declined the request of these Petitioners for the reasons stated therein. The Petitioners again approached the Tribunal by filing a

fresh O.A. No. 2401/2011 challenging the said order and sought pay parity alongwith their counterpart in CISF, however the learned CAT dismissed the same.

3. Learned counsel submitted that the issue regarding comparability of duties in all the equivalent posts in SSF and CISF was duly considered by the 5th Pay Commission and while considering the grant of revised pay scales to the SSF personnel, it observed that since the incumbents of the post in both organizations performed identical duties, the intention must be to grant existing cadres in SSF pay scale at par with their counterparts in CISF. Learned counsel also urged that the recommendations of the 5th Pay Commission were considered by the Government and accepted without any reservation as a result of which Constable and Head Constable in SSF were placed in the identical scale as that of their counterpart in the CISF but in so far as other cadre of Sub Inspector is concerned, the process of merger was selectively adopted and disbanded by the respondents due to administrative difficulties. Learned counsel further argued that even the 6th Pay Commission in its report in para 7.19.47 discussed the pay structure of SSF and considered the demand of higher pay scale for Sub-Inspectors and other security related duties at

par with that of CISF. Learned counsel also submits that in any case the relativity of SSF and CISF as ruled by 5th Pay Commission was duly accepted by Ministry of Finance and therefore, there could be no valid ground to deny the equal pay to these Petitioners at par with their counterparts in CISF. Learned counsel further submitted that the Tribunal by making a reference to 7th Pay Commission for redressal of their grievances ignored the fact that the right of the Petitioners emanates from the recommendations already made by the 5th Pay Commission.

4. We have heard the submissions made by the Learned Counsel for the petitioner and also perused the impugned order passed by the Learned CAT.

5. Undoubtedly 'equal pay for equal work' is considered to be a concomitant of Article 14 as much as 'equal pay for unequal work' will also be a negation of that right. Equal pay would depend upon not only the nature or the volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference, as held in the matter of *State of Orissa vs. Balaram Sahu & Ors., Etc. AIR 2003 SC 33* by the Hon'ble Supreme Court.

6. In *Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India*, [1988] 3 SCC 91, it has been held by the Hon'ble Supreme Court as follows:

"There may be qualitative differences as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on intelligible criteria which have a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasize that equal pay for equal work is a concomitant of article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right."

7. The relief on the principle of equal pay for equal work shall be granted only after it is found that discrimination is practised in giving different scales of pay in violation of the equality clause enshrined under Article 14 and 16 of the Constitution. The principle of 'equal pay for equal work' is not abstract one, it is open to the State to prescribe different scale of pay for different cadres having regard to nature, duties, responsibilities and educational qualifications. Different grades are laid

down in service with varying qualification for entry into, particular grade. Higher qualification and experience based on length of service are valid considerations for prescribing different pay scales for different cadres. The application of doctrine arises where employees are equal in every respect, in educational qualifications, duties, functions and measure of responsibilities and yet they are denied equality in pay. If the classification, for prescribing different scales of pay is rounded on reasonable nexus the principle will not apply. But if the classification is rounded on unreal and unreasonable basis it would violate Articles 14 and 16 of the Constitution and the principle of equal pay for equal work, must have its way. Thus before granting the relief, the Court shall record the findings that the aggrieved employees were discriminated in violation of the equality clause under Articles 14 and 16 of the Constitution, without there being any rationale for the classification. The burden of proof to prove the discrimination is on the aggrieved employees.

8. In the present matter, the respondents in their letter dated 10.09.2010 have referred to para 7.19.47 of the 6th Pay Commission Report and the perusal of the same would reveal that the 6th Pay Commission had not recommended pay parity of Sub-Inspectors of SSF

with their counter parts of CISF. Para 7.19.47 of the said report is reproduced as under:-

“7.19.47. Secretariat Security Force (SSF) exists for security of buildings and documents in the Central Secretariat. It has been demanded that the Sub-Inspectors, Inspectors and Subedar Majors in this service be extended higher pay scales. The posts of Inspector and Subedar Major are presently in the pay scale of Rs.5500-9000. They will automatically be upgraded to the higher pay scale of Rs.6500-10500 on account of restructuring of the pay scales being recommended by the Commission. In so far as other posts in this organisation are concerned, it is seen that the security related duties of most of the officers in Central Secretariat are with CISF. The rationale for continued existence of this Force does not exist. In fact, the force has already been declared a dying cadre. It will be more justified if the Force is merged with CISF at appropriate grades with the CISF taking over the security of all other buildings that are presently being looked after by SSF. This will, however, necessitate one to one equation between various analogous posts in CISF and SSF. Consequently, parity will need to be maintained for such of those posts in SSF which already had as established parity with the posts in CPMFs. The Commission recommends accordingly.”

9. The matter was thereafter sent for consideration to the Ministry of Finance, however it did not agree for the Upgradation of the pay scales of Sub-Inspectors, Inspectors, Subedars and Major working in SSF at par with their counter parts in CISF. The Petitioners again approached the W.P. (C) No. 86/2015

Tribunal by filing a fresh O.A. No. 2401/2011 challenging the said order and sought pay parity alongwith their counterpart in CISF. However, Learned CAT dismissed the same on the ground that the issue raised by these Petitioners lies within the realm of policy formulation and the Hon'ble Supreme Court has repeatedly emphasized the point that the courts/tribunals cannot substitute the Government or expert bodies like the Pay Commission etc. The tribunal found qualitative differences as regards the duties entrusted to the officers of the same rank in both the organizations and also the fact that these Petitioners did not opt to join CISF when the chance was given for merger, which was otherwise not unconditional, as only eligible and suitable personnel were to be taken at the time of merger. The tribunal also observed that the SSF has a limited range of duties and they are not required to move out to the field areas for operations. Therefore, most of them can stay at Delhi or around. It also held that these officers are not prepared to subject themselves to the harshness prevailing in the CISF as compared to the SSF. At the end, learned CAT observed that now the 7th Pay Commission has also been constituted therefore it would be an appropriate forum to consider the issue of pay parity of the Petitioners.

10. In such circumstances and in consideration of the fact that the petitioners have blatantly failed to bring on record any evidence showing how the petitioners are entitled to the same pay as their counterparts in CISF, we do not find any infirmity or perversity in the impugned order given by the learned CAT and we find ourselves in complete agreement with the reasoning given by it.

11. Accordingly, the order passed by the learned CAT is upheld and finding no merit in the present petition the same is hereby dismissed. No costs.

KAILASH GAMBHIR, J

I.S.MEHTA, J

JANUARY 07, 2015
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