

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.12587 of 2015

and

M.P.No.1 of 2015

B.Mohanan Pillai

.. Petitioner

vs.

1. Union of India, Rep. by
Deputy Chief of Army Staff (IS & T)
Government of India,
Integrated HQ of MOD (Army),
General Staff Branch,
Dte Gen of Mil Trg/MT-7,
DHQ PO, New Delhi - 110011.
2. The Commandant,
Officers Training Academy,
St. Thomas Mount,
Chennai - 600 016.
3. Establishment Officer,
Officers Training Academy,
St. Thomas Mount,
Chennai - 600 016.
4. Senior Accounts Officer (P),
Office of the Controller of Defence Accounts,
No.618, Teynampet,
Anna Salai, Chennai - 600 018.
5. Central Administrative Tribunal,
Chennai Bench, represented by its Registrar,
Chennai - 600 104.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to OA.No.105 of 2012, dated 27.11.2014 passed by the 5th Respondent Tribunal in so far as the order declining to set aside of the order of 1st respondent Vide No.46024/6th CPC/MACPS/GS/MT-7 dated 17.03.2011 impugned in the said OA.No.105 of 2012 and to quash the same and allow the OA.No.105 of 2012 as prayed for and direct the respondents to grant 3rd Financial Upgradation to the Grade Pay of Rs 4600/- w.e.f. 26.09.2009 with arrears of pay and allowances and other consequential benefits.

For Petitioner : M/s.Y.Kavitha

For Respondents : Mr.Venkataswamy Babu (for R1 to R4)
SPCGOI

R5 - Tribunal

ORDER

(Order of the Court was delivered by M.V.MURALIDARAN,J.)

This writ petition is filed to issue a Writ of Certiorarified Mandamus, calling for the records relating to OA.No.105 of 2012, dated 27.11.2014 passed by the 5th Respondent Tribunal in so far as the order declining to set aside of the order of 1st respondent Vide No 46024/6th CPC/MACPS/GS/MT-7 dated 17.03.2011 impugned in the said OA.No.105 of 2012 and to quash the same and allow the OA.No.105 of 2012 as prayed for and direct the respondents to grant 3rd Financial Upgradation to the Grade Pay of Rs 4600/- w.e.f. 26.09.2009 with arrears of pay and allowances and other consequential benefits.

2. As per the proceedings of the 2nd respondent the employees namely Ground Superintendent Grade - III working in IMA and NDA were given 1st and 2nd financial up gradation under the ACP scheme at Rs.4500-7000/- and Rs.5000-8000/-. As such he has also been granted the same up gradation and the same was also approved by the 4th respondent in the audit. Thereafter pursuant to the Vith pay commission he was granted the pay at Rs.9300-34800/- with GP Rs.4,200/-, which is the replacement pay band of RS.5000-8000/-.

3. When he has completed the 30 years of service and was awaiting for the 3rd financial up gradation to the Grade pay of Rs.4600/- under the Modified Assured Career Progression Scheme, the 4th respondent objected the 1st financial up gradation scale of pay of Rs.4500-7000/- w.e.f. 09.08.1999 and by his order dated 10.01.2011 directed to cancel the 3rd MACP. Even though the 2nd respondent forwarded proposal to grant grade pay at Rs.4600/- under MACP scheme, admitting the nature of work is identical but the 1st respondent by his order dated 17-03-2011 informed that the petitioner was entitled to the grade pay of Rs.4200/- only and on that basis the 3rd respondent issued orders for recovery of excess pay and re-fixation of pay.

4. The Petitioner challenged the said order in O.A.No.105 of 2012 before the 5th respondent Tribunal and the 5th respondent partly allowed the petition holding that no recovery shall be done however the re-fixation of pay was confirmed. Thus the present writ petition has been filed with regard to the order of re-fixation of pay on the ground that when the nature of work and the post in the order departments i.e. IMA and NDA are one and the same, carrying the same duties and responsibilities and when they have been granted the grade pay on financial up gradation the denial of same to the petitioner is discriminative and it amounts to treating in-equal, affecting the right of equality and thus the same is to be set-aside.

5. The Respondents 1 to 4 have filed counter and pleaded that the impugned order passed by them is correct since the petitioner was not authorized to grant scale of pay of Rs.4500-7000/- and Rs.5000-8000/- but allowed only RS.4000-6000 on 1st up gradation and Rs.4500-7000/- on the 2nd up gradation however it was erroneously revised as Rs.4500-7000/- and Rs.5000-8000/. The above mistake pointed out during the 3rd up gradation on completion of 30 years of service and as such the same is rectified through the impugned order and there is violation of irregularity in passing the order by the Tribunal.

6. We heard M/s.Y.Kavitha, learned counsel for the petitioner and Mr.Venkataswamy Babu, learned counsel for respondents 1 to 4.

7. The undisputed facts in the writ petition is the appointment of petitioner as Ground Superintendent Grade-III, which is a non-promotional post and thus the up gradation alone available. It is also admitted by the respondents that the same post carrying same nature of work in other departments namely Indian Military Academy, Dehradun(IMA) and National Defence Academy, Khadakwasala (NDA) and they were granted higher scale

of pay at Rs.4000-6000/- and allowed the 1st and 2nd financial up gradation under the ACP scheme at Rs.4500-7000/- and Rs.5000-8000/-. Though counter has been filed the said factum nature of post and work is not denied but the impugned order has been passed only on the ground that the petitioner was not authorized to get the pay and as well as financial up gradation.

8. It is pertinent to look here that there cannot be a different scale of pay, for the same post in various department when the post is one and the same and the nature of duties and responsibilities are also one and the same. The respondents do not deny the above and did not object the granting of the 1st and 2nd financial up gradation and also the fixation of pay during the audit. The recommendation made by the 2nd respondent on 15.05.2011 specifically indicating the nature of work of these posts is one and the same is also carry significance in the claim of the petitioner. At the time of awarding the 1st and 2nd financial up gradation the case has been examined by the respondents in detail and only thereafter the petitioner was allowed for the up gradation and fixation of pay.

9. The law is well settled that there cannot be a different pay for one post in various department and the same is not a reasonable classification and it is violative of Article 14 of Constitution of India. If different pay for the same post but services are different is valid but when there is no denial of fact that the posts are one and the services are also same in nature there cannot be a different pay, treating the one eligible for the pay as in equal as it would amount to discrimination. In this case as mentioned above the nature of post and work are one and the same, which is admitted and financial up gradation have been granted after verification and recommendation. Thus the same cannot be recalled simply on the ground that the same was not authorized.

10. In State of Haryana v. Jasmer Singh case reported in (1996) 11 SCC 77 the Hon'ble Apex Court has considered the provisions of Articles 39(d), 14 and 16 of the Constitution of India and held that the principles of "equal pay for equal work" is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. There may be differences in educational or technical qualifications, which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service, which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the

cadre, so that good performances can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job.

11. In State of Haryana v. Tilak Raj case reported in (2003) 6 SCC 123 the Hon'ble Apex Court has held as under: (SCC p. 127, paras 11-12)

"11. ... To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. ...

12. 'Equal pay for equal work' is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

12. In Mewa Ram Kanojia case reported in (1989) 2 SCC 235 and in J.P. Chaurasia case reported in (1989) 1 SCC 121 the Hon'ble Supreme Court has held that it is a settled legal proposition that it is not always impermissible to provide two different pay scales in the same cadre on the basis of selection based on merit with due regard to experience and seniority.

13. In U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd. v. Workmen, case reported in 1989 Supp (2) SCC 424, at page 424 the Hon'ble Supreme Court has held as:

2. The Tribunal came to find on material placed before it:

"...the fact remains that the junior 65 workmen promoted retrospectively did the same work as those promoted by way of personal promotion from 1971 to 1984 and if 65 junior workmen were given higher wage from 1971 to 1984, the decision of the Bank to give such higher wage to workmen promoted by way of personal promotion only from 1-6-1984 is arbitrary and unjust. The principle of equal pay for equal work must prevail and the inequity in wage from 1-4-1971 to 31-5-1984 cannot be allowed to stand."

3. The Tribunal's finding that both the groups were doing the same type of work has rightly not been challenged by the employer Bank as it is a pure finding of fact. If irrespective of classification of junior and senior groups, the same work was done by both, the principle of equal pay for equal work is definitely attracted and on the finding of fact the Tribunal was justified in applying the principle to give the same benefit to those who had been left out. We see no justification in the stand of the employer-Bank and the challenge is without merit. The appeal is accordingly dismissed. The parties are directed to bear their own costs in this Court.

14. As mentioned supra, it is the specific case of petitioner that the post which he hold i.e. Ground Superintendent Grade - III and the same post is available in IMA and NDA and further the nature of work, qualification are also one and the same. This fact has been admitted by the 2nd respondent and he himself recommended for fixation of pay and in pursuant to the same the petitioner has been granted the up gradation pay. Even the 1st respondent did not deny the same but the only ground urged in the impugned order, counter and as well as arguments is that the up gradation was not authorized. When there was a recommendation by the authority and the up gradation was granted by the competent authority and the same was also not objected and affirmed in the audit, the mere non-availability of authorization will not affect the eligibility of the petitioner in getting the up gradation.

15. In view of the above finding and settled proposition of law this court is of the view that the up gradation granted to the petitioner on par with the same post in other department cannot be faulted with and the petitioner is entitled to the same, which was rightly granted and as such the same cannot be cancelled but the 5th respondent without considering the settled law on this point and as well as without considering the case of parties in proper and prescriptive manner committed wrong in approving the order of respondents cancelling he up gradation and fixation of pay.

16.In the result:

(a) the writ petition is allowed and impugned order passed by the Tribunal in O.A.No.105 of 2012 dated 27.11.2014 in so far as the order declining to set-aside the order of 1st respondent in No.46024/6th CPC/MACP/GS/MT-7 dated 17.03.2011 is set-aside and the impugned order of the 1st respondent in No.46024/6th CPC/MACP/GS/MT-7 dated 17.03.2011 is quashed;

(b) the respondents are directed to grant the 3rd financial up gradation to the grade pay of Rs.4,600/- w.e.f 26-09-09 with all arrears within a period of eight weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1. Deputy Chief of Army Staff (IS & T)
Government of India,
Integrated HQ of MOD (Army),
General Staff Branch,
Dte Gen of Mil Trg/MT-7,
DHQ PO, New Delhi - 110011.
2. The Commandant,
Officers Training Academy,
St. Thomas Mount,
Chennai - 600 016.
3. The Establishment Officer,
Officers Training Academy,
St. Thomas Mount,
Chennai - 600 016.

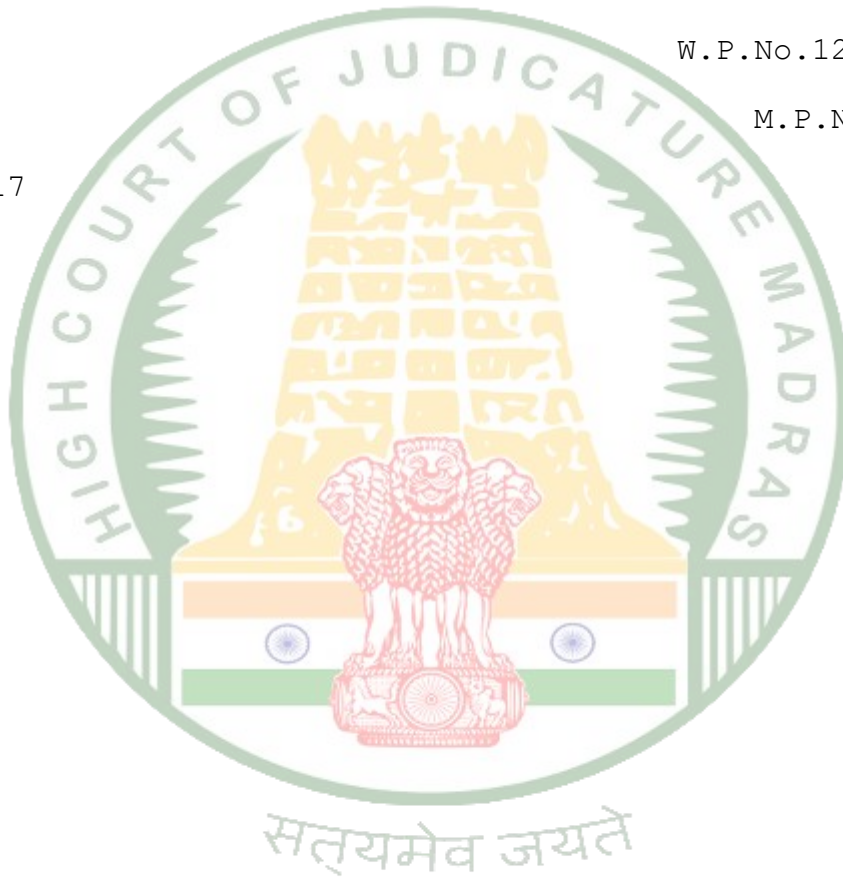
4. The Senior Accounts Officer (P),
Office of the Controller of Defence Accounts,
No.618, Teynampet,
Anna Salai, Chennai - 600 018.

5. The Central Administrative Tribunal,
Chennai Bench, represented by its Registrar,
Chennai - 600 104.

+1cc to Mr.Venkataswamy Babu, Advocate, S.R.No.15567

W.P.No.12587 of 2015
and
M.P.No.1 of 2015

CS/12/07/17



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