

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment: 25.10.2018

+

**W.P.(C) Nos. 23729/2005, 23730/2005, 23731/2005, 23732/2005,
23733/2005 & 23734/2005**

TRANSPORT EMPLOYEES WELFARE ASSO. Petitioner

Through: Mr. Manoj K. Srivastava, Advocate

versus

UOI & ORS.

..... Respondents

Through: Mr. Vivekanand Mishra and
Mr. Vipul Agrawal, Advocates for
R-1/UOI.

Mr. Naushad Ahmed Khan, ASC
(Civil), GNCTD with Mr. Zahid
Hanief, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. This petition is directed against an order dated July 04, 2005 passed by the Central Administrative Tribunal ("the Tribunal") in OA No. 2441/2004. Petitioner no. 1 is a society comprising, *inter alia*, of employees of the Enforcement Branch of the Directorate of Transport, Govt. of NCT Delhi ("the Enforcement Branch"). The other petitioners are individual employees of various ranks. By the impugned order, the Tribunal has rejected the petitioners' claim for pay parity with the corresponding ranks in Delhi Police w.e.f. January 01, 1996.

2. It is the contention of the petitioners that, until the report of the Third Pay Commission the parity in pay scale between the various ranks of the Enforcement Branch and corresponding ranks of the Delhi Police was maintained, but has thereafter been disturbed.

3. The petitioners first agitated their grievance by filing OA No. 1087/1994 before the Tribunal, which was disposed of on May 26, 1994 with a direction that the petitioner would make a representation to the concerned expert body. Pursuant to this order, the petitioner made a representation to the Fifth Central Pay Commission, which clarified that it did not intend to re-open past cases or make recommendation with respect to rectification of past anomalies with retrospective effect. A meeting was thereafter held with the Chief Minister of the Govt. of NCT Delhi who directed that same pay scale be given to the employees of the Enforcement Branch as to Delhi Police. As this decision was not implemented, they filed a second application before the Tribunal, being OA No. 1242/1999. This was disposed of by an order dated March 21, 2001 directing the concerned respondents to dispose of the representations of the petitioner association. The Government of NCT Delhi thereafter wrote a letter dated January 30, 2003 to the Ministry of Home Affairs, Government of India in this regard (which, according to the petitioners supported their case), but the Ministry of Home Affairs rejected the representation by an order dated March 09, 2004. It was consequent upon this rejection that OA No. 2441/2004 was filed, which has been dismissed by the impugned order dated July 04, 2005. The Tribunal has *inter alia* held that the determination of the executive with regard to pay fixation can be interfered with only if hostile discrimination is established.

4. Learned counsel for the petitioners submitted that the nature of duties performed by the officers of the Enforcement Branch is substantially similar to those performed by the corresponding ranks of the Delhi Police, and the fixation of differential pay scales is therefore tantamount to hostile discrimination, being contrary to the principle of equal pay for equal work. In support of this contention, the petitioners relied both before the Tribunal and before this Court, upon (a) a notification dated June 21, 1999 prescribing similar uniform for them as for the corresponding ranks of the Delhi Police; (b) the decision of the Chief Minister of the Government of NCT of Delhi dated August 10, 1998; and (c) the letter of the Government of NCT of Delhi dated January 31, 2003, addressed to the Ministry of Home Affairs.

5. Learned counsel for the respondents, on the other hand, supported the Judgment of the Tribunal on the basis of the reasoning contained in the order of the Ministry of Home Affairs dated March 09, 2004.

6. Having heard learned counsel for the parties, we are of the view that the materials relied upon by the petitioner do not go so far as to establish a claim of hostile discrimination. The functions of the personnel of Delhi Police are of a far greater scope than the functions of the officials of the Enforcement Branch. The material placed on the record by the respondents shows that the officials of Delhi Police are entrusted with duties like prevention of crime, control of law and order, control of riots, investigation of crime and VIP security, whereas the Enforcement Branch staff is only concerned with enforcement of the provisions of the Motor Vehicles Act and Rules. To claim parity on the basis that the same functions i.e. enforcement of provisions of the Motor Vehicle Act and Rules, are also

discharged by officers of the Delhi Traffic Police is also untenable. First, it is not disputed that the officials of the Delhi Police and the Delhi Traffic Police are interchangeable, and therefore in the same scale of pay. Such is not the case with the Enforcement Branch. Second, even in the case of the Delhi Traffic Police, as was conceded by learned counsel for the petitioner, they are empowered to exercise law and order functions in addition to enforcement of the provisions of the Motor Vehicles Act and Rules. The functions of the Enforcement Branch officials may well be important and arduous, as contended by the learned counsel for the petitioners, but that by itself cannot be determinative of the issues involved.

7. Coming to the materials relied upon by the learned counsel for the petitioners, we are of the view that similarity of uniform does not constitute any basis for a claim of parity of pay. Neither the nomenclature of a post, nor any other such superficial similarity, can validly found such a claim. The stand of Government of NCT of Delhi also does not take the matter much further. In view of the fact that the decision making authority in respect of the pay scale of the petitioners was the Ministry of Home Affairs, Government of India and not the Government of NCT Delhi, the minutes of the meeting held on 10.08.1998, and the letter dated 30.01.2003 addressed by the Government of NCT Delhi to the Ministry of Home Affairs, would not conclude the issue. In any event, the Government of NCT Delhi unequivocally opposed the case of the petitioners before the Tribunal.

8. We are also not persuaded that the Enforcement Branch and the Delhi Police are similar in terms of qualifications, mode of recruitment, conditions of employment or other factors which could support the claim of hostile discrimination. Learned counsel for the respondent drew our

attention, *inter alia*, to Sections 3, 12 and 24 of the Delhi Police Act, 1978 which read as follows:-

“3. One police force for the whole of Delhi.- *There shall be one police force for the whole of Delhi and all officers and subordinate ranks of the police force shall be liable for posting to any branch of the force including the Delhi Armed Police.*

12. Appointment of subordinate rank.- *Subject to such general or special orders in writing as the Administrator may make in this behalf,-*

(a) Inspectors of Police may be appointed by the Additional Commissioner of Police; and

(b) Sub-Inspectors of Police and other officers of subordinate rank may be appointed by the Deputy Commissioners of Police, Additional Deputy Commissioners of Police, Principal of the Police Training College or of the Police Training School, or any other officer of equivalent rank.

24. Police officers to be deemed to be always on duty and to be liable to employment in any part of Delhi.- *Every police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty and any police officer or any number or body of police officers allocated for duty in any part of Delhi may, if the Commissioner of Police so directs, at any time, be employed on police duty in any other part of Delhi for so long as the services of the police officer or number or body of police officers may be required in such other part of Delhi.”*

These provisions apply to the Delhi Police but not to the Enforcement Branch.

9. Learned counsel for the petitioner has relied upon the judgments of the Supreme Court in *State of Punjab and Ors. vs. Jagjit Singh and Ors* (2017) 1 SSC 148 and *Jaipal and Ors. vs State of Haryana and Ors.* (1988)

3 SSC 354 (1991) Supp (2) SSC 565. In *Jagjit Singh* (supra), learned counsel for the petitioner has relied upon paragraph 7, wherein the Supreme Court has cited its earlier decision in *Randhir Singh vs Union of India* (1982) 1 SSC 618. In *Randhir Singh* (supra), it was held that persons discharging identical powers, duties and responsibilities but serving in different departments were entitled to the same pay. In *Jaipal* (supra), the Supreme Court held that a complete identity in all respects of work is not required so long as the two classes of persons do the same work under the same employer with similar responsibility and under similar working conditions. In view of the fact that the petitioners' claims have not been rejected neither on the ground that they work in different departments, nor on the ground of a lack of complete identity of functions, these judgments do not aid them.

10. In fact, while summarizing the principles applicable to claims of pay parity in paragraph 42 of the judgment in *Jagjit Singh* (supra), the Supreme Court has emphasized that the onus of proof lies upon the person who claims it, and the claim must be based upon equality of functions, their quality and sensitivity. This burden, the petitioner has failed to discharge.

11. In these circumstances, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution and interfere with the impugned order of the Tribunal. The writ petition is therefore dismissed, but with no order as to cost.

PRATEEK JALAN, J

S. RAVINDRA BHAT, J

OCTOBER 25, 2018/pv