

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 15026 of 2000

In the matter of : Shri ML Grover

Mr. G.C. Chakraborty

Mr. Kashinath Bhattacharyya

Mr. A. Bhattacharyya

.....For the Petitioner

Mr. Anirban Mitra

.....For Union of India

Heard on : 30.08.2022

Judgment on : 29.09.2022

Krishna Rao, J.:

The petitioner has filed the instant writ application praying for grant of Pay Scale of Selection Grade of Rs. 14300 - 18300 instead of Rs. 12000 - 16500.

The petitioner being the Ex-Serviceman was appointed as Inspector in the Central Industrial Security Force (herein after referred as "CISF") on

10.11.1975 and in the year, the petitioner was promoted to the post of Assistant Commandant on 28th July, 1984. On 20th February, 1992, the petitioner was promoted to the post of Deputy Commandant and subsequently the petitioner was promoted to the post of Commandant on 25th November, 1998.

On 18th December, 1998 in was informed to the petitioner and others that the Deputy Commandants who have been ordered for promotion to the rank of Commandants dt. 20th November, 1998 will draw pay in the rank of Commandant in the revised pay scale of Rs. 12,000-375-16500. As per order dt. 20th January, 1998, the Senior Commandants in the scale of pay of Rs.14300-18300 will wear Ashoka and 2 Stars with Gorget Patches and the Commandant in the scale of pay of Rs. 12000/- will wear Ashoka and one Star.

Being aggrieved with the communication dt. 18th December, 1998, the petitioner had made representation claiming scale of Pay of Rs. 14300 – 18300 instead of Rs. 12000-16500/-. The representation of the petitioner was duly considered by the respondent authorities and have rejected the claim of the petitioner by passing the following order :

“The representation of Shri M. L. Grover, Commandant has been examined in consultation with Accounts Branch of this HQrs. It is found that Shri M.L. Grover was promoted to the rank of Commandant with effect from 25.11.98 in the pay-scale of Rs. 12000-16500/- in a DPC held by the UPSC in Oct’98. As per Govt. instructions, the pay-scale of Rs. 14300-18300/- has been allowed to only those Commandants who were working in the pre-revised scale of Rs. 4100-5300/-. Hence, the request of the officer seeking higher pay-scale (Rs. 14300-18300/- is neither justified nor covered under the Govt. instructions.”

Mr. G. C. Chakraborty, Ld. Counsel representing the petitioner submits that the arrangements of two sets of pay scale for the post of commandant caused gross discrimination and is violation of Article 39(d) of the Constitution of India as well as the principal of equal pay for equal work. Mr. Chakraborty submits that duties and responsibilities of the commandants are same and identical either before 01.01.2006 or after .01.01.2006.

Mr. Chakraborty further submits that whether direct or promotion there is only one Recruitment Rule and there cannot be two scale of pay. Ld. Counsel further submits that amendment in the Recruitment Rule was made only in the month of July, 2000 i.e. after the promotion of the petitioner. Mr. Chakraborty submits that it is settled position of law that for one post there cannot be two different scale of pay. Mr. Chakraborty relied upon the following judgments :

- i. *(1999)4 SCC 756 (Kamlakar & Others – versus- Union of India & Ors).*
- ii. *(1988)1 SCC 122 (Daily Rated Casual Workers – versus- Union of India & Ors.)*
- iii. *Unreported Judgment Passed by the Hon’ble High Court at New Delhi in WP (C) No. 7379 of 2017 dt. 26th September, 2017 (Union of India & Anr. -versus- Sashi Kant & Ors).*

Mr. Anirban Mitra, Ld. Counsel representing Respondents/ Union of India submits that prior to implementation of Fifth Pay Commission, there were two pay scales for the post of Commandant in the CISF i.e. Rs.4100- 5300 (for

Ordinary Grade) and Rs. 4500-5700/- (for Selection Grade). After implementation of Fifth Pay Commission, the nomenclature of the post of Commandant (Ordinary Grade) and Commandant (Selection Grade) was changed as Commandant and Senior Commandant. The replacement of pay scale of Rs.12000 – 16500/- was fixed for the Commandant and Rs. 14300-18300/- was fixed for Senior Commandant.

Mr. Mitra had drawn the attention of the Court to the Order dt. 27th October 1997, and referred para 3 and 4 of the said order which reads as follows :

“3. In the case of CISF, the President is pleased to accept the recommendations made in para 70.25 of the recommendations of the 5th Central pay Commission and the Commandants (Ordinary Grade) will be placed in the pay scale of Rs. 3700-5000 and will be known as Commandant and the Commandant (Selection Grade) in the pay scale of Rs. 4500-5700 will be designated as Senior Commandant in the pay scale of Rs. 4500-5700.

4. The Commandant (Ordinary Grade) in CISF who are in the pay scale of Rs. 4100 - 5300 will draw the scale of Rs. 4500 - 5700 as personal to them till they are placed at Senior Commandant in their turn. The Commandant (Ordinary Grade) who draw pay in the scale of pay of Rs. 4500-5700 as personal to them will continue to wear the rank as prescribed for the Commandant.”

Mr. Mitra further relied upon the Notification issued by the Ministry dt. 28.11.1997 which reads as follows :

“The President is pleased to accept the recommendations made by the 5th Central Pay Commission in respect of Central Industrial Security Force and the Commandants (Ordinary Grade) will be placed in the pay scale of Rs. 3700 – 5000 and will be known as Commandant and the

Commandant (Selection Grade) in the pay scale of Rs. 4500 -5700 will be designated as Senior Commandant in the pay scale of Rs. 4500- 5700.

2. The Commandant (Ordinary Grade) in CISF who are in the pay scale of Rs. 4100-5300 will draw the scale of Rs. 4500-5700 as personal to them till they are placed at Senior Commandant in their turn. The Commandant (Ordinary Grade) who draw pay in the scale of pay of Rs. 4500- 5700 as personal to them will continue to wear the rank as prescribed for the Commandant.

3. These orders will take effect from 1st October, 1997 and are in pursuance of the orders of MHA in No. II - -27011/92/97-Pr.I (i) dated 27th Oct'1997."

Mr. Mitra further submits that the petitioner was holding the post of Deputy Commandant till 24.11.1998 and only on 25.11.1998, the petitioner was promoted to the post of Commandant and thus the petitioner cannot claim the Scale of Pay Rs. 14300- 18300/-.

Heard the Learned counsels for the respective parties and perused the documents available on record. Admittedly, the petitioner was promoted to the post of Commandant on 15th November, 1998 from the post of Deputy Commandant. As per the Government Order dt. 27th October, 1997 in terms of the recommendation of the 5th Central Pay Commission, the Commandants (Ordinary Grade) have been placed in the Scale of Rs. 3700-5000/- and they will be known as Commandant and the Commandants (Selection Grade) have been placed in the Scale of Rs. 4500-5700/- and they have been re-designated as Senior Commandant in the same scale of pay. In the said order, it was also clarified that the commandant (Ordinary Grade) in CISF who are in the Scale of Rs. 4100-5300 will draw the scale of Rs. 4500-5700 as personal to them till

they are placed at Senior Commandant in their turn. It is also clarified that the commandant (Ordinary Grade) who draw pay in the scale of Pay of Rs. 4500-5700 as personal to them will continue to wear the rank as prescribed for the Commandant.

In the present case at no point of time, the petitioner was drawing the scale of Pay of Rs. 4500-5700. The petitioner was promoted to the post of Commandant on 25.11.1998 and at the time of his promotion, the petitioner the order dt. 27th November, 1997 was in force.

The subsequent Notification dt. 28th November, 1988 also clarified the Commandants (Ordinary Grade) will be placed in the scale of Rs. 3700-5000/- will be known as Commandant and the Commandant (Selection Grade) in the scale of Pay of Rs. 4500-5700 will be designated as Senior Commandant in the same scale.

It is not the case of the petitioner that the petitioner is holding the post of Senior Commandant. In the communication dt. 18th December, 1998 also clarified that Senior Commandant will wear Ashoka and Two Star with Gorget patches and the Commandant will wear Ashoka with One Star.

This Court also considered the judgment relied by the petitioner but the same are not applicable in the present case as the present case is not coming under the purview of equal pay for equal work or one post and different scale of pay and claimed by the petitioner.

In view of the above, **WPA 15026 of 2000** is accordingly **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)