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

Judgment reserved on: 09.11.2022

% **Judgment delivered on: 20.12.2022**

\+ W.P.(C) 4737/2007

YASH PAL SINGH ..... Petitioner

Through: Mr. Anil Singal, Advocate.

versus

UOI & ORS. ..... Respondent

Through: Mr. Mukul Singh, CGSC with Ms. Ira Singh, Advocates for respondent/ UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, C.J.

1. The present petition is arising out of order dated 10.05.2006, passed in O.A. No. 620/2005 by the Central Administrative Tribunal, Principal Bench, New Delhi, by which the claim of the Petitioner for grant of salary of the post of Data Entry Operator (DEO) for the period w.e.f. 09.09.1998 to 03.04.2006 has been rejected. The facts of the case reveal that the Petitioner before this Court was undisputedly appointed as a watchman on ad hoc basis

vide order dated 08.08.1996. His appointment was purely on temporary basis in the pay scale of 750-12-870-14-940. That another order dated 08.09.1998 was issued by the Respondent directing the Petitioner to report on duty on the post of Watchman. The Petitioner thereafter was posted on 13.01.1999 under the Commissioner of Income Tax, Computer Operations.

2. The Petitioner submitted his joining pursuant to the aforesaid order and the Petitioner's contention is that he was sent for Data Entry Training by an order dated 13.01.1999. The Petitioner has further stated that applications were invited from eligible employees for the post of DEO vide circular dated 24.05.2000. The Petitioner submitted his application for the post of DEO on 07.06.2000 and his post of watchman was regularized on 12.02.2001. The Petitioner's contention is that post of Watchman was regularized, but he was working as a DEO and an honorarium was also granted to him @ Rs. 1500 every year. One such order granting honorarium to the Petitioner dated 30.03.2001 is on record.

3. The Petitioner has further stated that the Respondents thereafter issued an order of promotion on 31.03.2006, promoting Group C and Group D employees to the post of Tax Assistant (earlier known as Data Entry Operator) and the Petitioner was also promoted to the post of Tax Assistant w.e.f. 03.04.2006 vide order dated 31.03.2006.

4. The Petitioner came up with the grievance before the Central Administrative Tribunal stating that he was holding the substantive post of watchman, however, the Respondents directed him to work as DEO w.e.f.

09.09.1998 till 03.04.2006 and, therefore, he should be paid the pay scale of DEO, i.e. Rs.4000-6000 instead of Rs.2550-3200.

5. A detailed and exhaustive reply was filed by the Union of India before the Tribunal and the Tribunal has dismissed the Original Application preferred by the Petitioner. The operative paragraphs of the Order passed by the Tribunal, dismissing the Original Application as contained in paragraphs 5 to 8 read, as under:

> *"5. It is not disputed by respondents that applicant has been discharging functions of DEO Grade-A from 9.8.1999 although his services were regularized in the post of Watchman. Annexure A-5 dated 30.3.2001 is the recommendation of the Commissioner of Income Tax (Computer Operations), East Block, R.K. Puram, New Delhi, recommending grant of honorarium to officials like applicant working in TAS Section of RCC who have been processing more than 1.5 lakh challans every month and more than 3 lakh challans during the months of June, September, December and March every year. It has also not been denied by the applicant that the post of DEO is not the next post in the line of promotion for the post of Watchman. Normally, respondents could not have taken from applicant the work of the post of DEO.*
>
> *6. In the case of V.C. Gupta (supra) a Senior Manager who was delegated the powers of Chief Manager was held entitled to the pay of the higher post on the principle of quantum of merit. Again in the case of Badri Prasad (supra), benefit of pay protection, age relaxation and advantage of experience for consideration for promotion was considered as a legitimate claim in respect of the appellants who had worked on the promotional post on ad hoc basis for long number of years and were subsequently reverted. In both these cases aggrieved parties had been working on the higher post but the higher post was the next post in direct line of promotion for the post held by the petitioners. The present case is different in the sense that*

applicant did not work on a post which was promotional post in direct line of promotion for the lower post. However, applicant is certainly entitled to honorarium as recommended vide Annexure A-5 dated 30.3.2001 as per rules and government instructions. Government have been extracting the work of the post of DEO from applicant for a long period from 9.9.1998 to 3.4.2006 but now rewarding him in any manner for that.

7. In the facts and circumstances of the case, in our view, it is certainly in the interest of justice that recommendation made by the Commissioner who has been taking work from applicant on the post of DEO is accepted by respondents and honorarium of Rs.1500/- per financial year is paid to applicant for the period 9.9.1998 to 3.4.2006 within a period of three months from the date of communication of these orders. Ordered accordingly.

8. OA is disposed of in the above terms."

6. Learned Counsel for the Petitioner has vehemently argued before this Court that though the Petitioner was appointed as a Watchman, he is entitled to salary for the post of DEO because he was working as DEO from 09.09.1998 to 03.04.2006 and the factum that he was working as DEO is established from the fact that he was paid an honorarium @ Rs.1500/- per year for the period w.e.f. 09.09.1998 to 03.04.2006. Therefore, denial of higher pay scale of the post of DEO to the Petitioner by the Department and by the Tribunal is violative of Articles 14,16 and 21 of the Constitution of India, and he is entitled for the pay scale of Rs.4000-6000 which is the pay scale of DEO/ Tax Assistant.

7. Learned Counsel for the Petitioner has vehemently argued before this Court that once the Petitioner was performing the same duties and responsibilities as a regularly recruited DEO, Grade A (Tax Assistant), the

nature of duty of the Petitioner as a DEO was the same, and the Petitioner could not have been discriminated in the matter of grant of pay scale. Therefore, the order passed by the Tribunal deserves to be set aside and the Respondents deserve a command to pay the salary to the Petitioner for the post of DEO w.e.f. 09.09.1998 to 03.04.2006.

8. Learned Counsel for the Petitioner has also vehemently argued before this Court that the Recruitment Rules provide for promotion for Group D employees to the tune of 25% of the vacancies of Tax Assistant (DEO) and once there is a channel of promotion, the Petitioner should have been treated as a departmental candidate for the purposes of promotion and should have granted the pay scale to the Petitioner with retrospective effect i.e. w.e.f. 09.09.1998 i.e. the date from which he was working as DEO.

9. Heavy reliance has been placed before the Tribunal upon a judgment delivered in the case ***of Badri Prasad & Ors. v. Union of India & Ors***., AIR 2005 SC 2531, ***V.C. Gupta v. Union of India & Ors***., 2002(2) ATJ 261 (Delhi High Court). Further, reliance has been placed on ***State of Punjab v. Jagjit Singh***, (2017) 1 SCC 148 and ***Sabha Shanker Dube v. Divisional Forest Officer and Others***, (2019) 12 SCC 297.

10. This Court has heard learned Counsel for the parties at length and perused the record.

11. The undisputed facts of the case reveal that the Petitioner is a back door entrant in the Income Tax Department and he was appointed purely on a temporary basis by way of an Order dated 08.08.1996.

12. The orders on record reveal that the Petitioner was appointed purely on temporary basis as a Watchman which is a Group D post.

13. The Petitioner has stated that he was posted as DEO by an order dated 08.09.1998 and the same is also on record. The order dated 08.09.1998 nowhere reflects that the Petitioner has been posted as DEO. His post mentioned in the order is Watchman and he has been posted under the Commissioner of Income Tax, Computer Operation. There were other people who were working as Peon and Watchman. They were also posted along with the Petitioner.

14. It is true that the Petitioner was imparted some basic training for DEO and an order is also on record dated 13.01.1999 but the fact remains that the Department later on issued on order regularizing the Petitioner is post as a Watchman in the pay scale of 2550-55-2660-60-3200. The Order dated 12.02.2021, regularizing the Petitioner is reproduced as under:

"F.No: P-314/28/Regularistion/W.M./2000-01/

OFFICE OF THE

CHIEF COMMISSIONER OF INCOME TAX

C.R. BUILDING, I.P. ESTATE,

NEW DELHI

DATED: 12/2/2001

ORDER NO. $\frac{130}{2000-01}$ */ PERSONNEL*

Sub: <u>REGULARISATION OF WATCHMAN-ORDER-REGARDING</u>

The following Watchmen who are working on ad-hoc basis are regularized in the pay scale of Rs.2550-55-2660-60-3200 and such other allowances as may be sanctioned by the Government of India from time to time. This order takes effect from the date of issue.

S.NO	*NAME OF OFFICIAL*	*D.O.B*	*CAT.*	*PLACE OF POSTING*
	(S/SHRI)			
1	*RANJAN KAMBOJ*	*30.1273*	*GN*	*CIT(A)-XXVIII*
2	*GEORGE TOPPAN*	*05.0571*	*GN*	*PRO*
3	*JOHN MATHEW*	*13.1159*	*GN*	*PRO*
4	*KRISHAN PAL SINGH*	*05.12.65*	*GN*	*PRO*
5	*KISHAN CHAND*	*05.05.70*	*GN*	*PRO*
6	*KARAN BIR KARDAN*	*02.1274*	*SC*	*DG(INV)*
7	*DHIRENDER SINGH*	*10.02.64*	*GN*	*PRO*
8	*BHURAJ SING*	*09.0896*	*GN*	*PRO*
9	*S. LAXMI*	*10.0568*	*ST*	*ITAT*
10	*RAJ BABU*	*09.0872*	*SC*	*DG(INV)*
11	*SUSHIL KUMAR SHARMA*	*15.04.73*	*GN*	*PRO*
12	*S. PERIHA SWAMY*	*25.1155*		*PRO*
13	*RAM RAJ*	*15.0775*	*GN*	*CBDT*

14	*VIJAY BAHADUR THAPA*	*08.10.68*	*GN*	*ITAT*
15	*RAM KARAN*	*01.0159*	*GN*	*PRO*
16	*YASHPAL SINGH*	*27.07.54*	*GN*	*PRO*
17	*DHARAM VEER*	*20.0367*	*GN*	*PRO*

This order does not indicate their inter-se-seniority in cadre of Watchmen

This issue with the approval of the CCIT, Delhi, New Delhi"

15. The Petitioner was granted Rs.1500/- per month as honorarium by the Department as claimed by the Petitioner but grant of honorarium to the Petitioner was based upon the recommendations of higher officers and grant of honorarium does not mean that the Petitioner was promoted, at any point of time, either on temporary or on ad hoc basis to the post of DEO/ Tax Assistant. The Petitioner was finally promoted to the post of Tax Assistant (earlier known as DEO) by an order dated 31.03.2006 and, therefore, he has been paid the pay scale of Tax Assistant, i.e. Rs.4000-100-6000.

16. The undisputed facts of the case make it very clear that the Petitioner was a back door entrant and was appointed to the post of Watchman, his services were regularized for the post of Watchman and he was later on promoted to the post of Tax Assistant (DEO). The material on record does not establish that the Petitioner has worked as a full-time DEO with the Department. The Department might have made him work as a DEO at some point of time on account paucity of employees for which the Petitioner was

suitably compensated by way of payment in the form of honorarium of Rs.1500/ per year. The Petitioner did not protest at any point of time in the matter of grant of honorarium and it is only when he was regularly promoted to the post of Tax Assistant (DEO) in the year 2006, he came up before the Tribunal claiming pay scale of the post of DEO w.e.f. 09.09.1998. The Tribunal was, therefore, justified in dismissing the Original Application preferred by the Petitioner.

17. This Court has carefully gone through the judgments relied upon on the subject of grant of same pay scale. The latest judgment relied upon has been delivered in the case of ***Sabha Shanker Dube*** (supra). The issue involved in the aforesaid case was with respect to daily-rated workers employed in Group 'D' post in the Forest Department in the State of Uttar Pradesh. The Petitioners in the aforesaid case were claiming the same pay scale which was granted to their counterparts working on regular posts. The Writ Petition was dismissed by the learned Single Judge and, thereafter the Division Bench has also dismissed the appeals preferred by the daily-wagers. The daily-wagers finally came up before the Hon'ble Supreme Court and the Hon'ble Supreme Court taking into account the judgment in the case of ***Jagjit Singh*** (Supra) has allowed the SLP and has directed grant of minimum of pay scales to the daily wagers. Paragraphs 9 to 14 of the judgment passed by the Hon'ble Supreme Court read as under:

> *"**9.** The daily-wagers relied upon a judgment of this Court in Putti Lal [State of U.P. v. Putti Lal, (2006) 9 SCC 337 : 2006 SCC (L&S) 1819] and submitted that the same relief may be extended to them. It is relevant to note that the judgment in Putti Lal [State of U.P. v. Putti Lal, (2006) 9 SCC 337 : 2006*

SCC (L&S) 1819] relates to a dispute similar to that involved in this case. Daily-rated wage earners in the Forest Department in the State of Uttar Pradesh approached the High Court for regularisation of their services. The Division Bench of the High Court of Allahabad directed the State Government to constitute the Committee as directed in order to frame the scheme for regularisation. The judgment of the High Court that the daily-rated wage workers shall be paid at the minimum of the pay scales was affirmed by this Court on the principle of equal pay for equal work. The Division Bench of the High Court while deciding State of U.P. v. Chhiddi [State of U.P. v. Chhiddi, 2015 SCC OnLine All 9087 : (2016) 1 All LJ 226] referred to the judgment in Putti Lal [State of U.P. v. Putti Lal, (2006) 9 SCC 337 : 2006 SCC (L&S) 1819] but placed reliance on a later judgment of this Court in Tilak Raj [State of Haryana v. Tilak Raj, (2003) 6 SCC 123 : 2003 SCC (L&S) 828] . The Division Bench of the High Court also cited Surjit Singh [State of Punjab v. Surjit Singh, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696] to hold that the daily-wagers cannot seek the benefit of the judgment of Putti Lal case [State of U.P. v. Putti Lal, (2006) 9 SCC 337 : 2006 SCC (L&S) 1819] in view of the subsequent decisions of this Court wherein, according to the High Court, it was held that daily-wage employees were not entitled to the minimum of the pay scales.

***10.** On a comprehensive consideration of the entire law on the subject of parity of pay scales on the principle of equal pay for equal work, this Court in Jagjit Singh [State of Punjab v. Jagjit Singh, (2017) 1 SCC 148 : (2017) 1 SCC (L&S) 1] held as follows: (SCC p. 223, para 58)*

"58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his

family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

11. *The issue that was considered by this Court in Jagjit Singh [State of Punjab v. Jagjit Singh, (2017) 1 SCC 148 : (2017) 1 SCC (L&S) 1] is whether temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and likewise) are entitled to the minimum of the regular pay scales on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned posts. After considering several judgments including the judgments of this Court in Tilak Raj [State of Haryana v. Tilak Raj, (2003) 6 SCC 123 : 2003 SCC (L&S) 828] and Surjit Singh [State of Punjab v. Surjit Singh, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696] , this Court held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post.*

12 *In view of the judgment in Jagjit Singh [State of Punjab v. Jagjit Singh, (2017) 1 SCC 148 : (2017) 1 SCC (L&S) 1] , we are unable to uphold the view of the High Court that the appellants herein are not entitled to be paid the minimum of the pay scales. We are not called upon to adjudicate on the rights of the appellants relating to the regularisation of their services. We are concerned only with the principle laid down by this Court initially in Putti Lal [State of U.P. v. Putti Lal, (2006) 9 SCC 337 : 2006 SCC (L&S) 1819] relating to persons who are similarly situated to the appellants and later affirmed in Jagjit Singh [State of Punjab v. Jagjit Singh, (2017) 1 SCC 148 : (2017) 1 SCC (L&S) 1] that temporary employees are entitled to minimum of the pay scales as long as they continue in service.*

> ***13.*** *We express no opinion on the contention of the State Government that the appellants are not entitled to the reliefs as they are not working on Group 'D' posts and that some of them worked for short periods in projects.*
>
> ***14.*** *For the aforementioned reasons, we allow these appeals and set aside the judgments of the High Court holding that the appellants are entitled to be paid the minimum of the pay scales applicable to regular employees working on the same posts. The State of Uttar Pradesh is directed to make payment of the minimum of pay scales to the appellants with effect from 1-12-2018."*

18. In the considered opinion of this Court, the judgment delivered in the aforesaid case does not help the Petitioner in any manner. The Petitioner who is a back door entrant was appointed as a Watchman. His post of Watchman was regularized and he has, at no point of time, challenged his regularization order dated 12.02.2001. The order regularizing his post as Watchman was never subjected to judicial scrutiny and the Petitioner accepted the order regularizing his post of Watchman with open eyes and, therefore, he was rightly granted the pay scale of Rs.2550-55-2660-60-3200.

19. In the considered opinion of this Court, the judgment delivered in the case of ***Sabha Shanker Dube*** (supra) does not help the Petitioner in any manner. He was appointed to the post of Watchman which was subsequently regularized and his substantive post was of Watchman. Therefore, once he was holding the post of Watchman, the question of granting him the pay scale of the post of Tax Assistant/ DEO, in the peculiar facts and circumstances of the case do not arise.

20. This Court does not find any reason to interfere with the order passed by the Tribunal and the writ petition is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

DECEMBER 20, 2022
N.Khanna