

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12854 of 2023

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Anil Kumar Son of Shri Bhawneshwar Sharma, of Mohalla Birla Colony,
P.S.- Fulwari, District- Patna.

... .. Petitioner/s

Versus

1. The Union Of India, through Home Secretary, Govt. of India, Delhi- 110001.
2. The State of Bihar, through Addl. Chief Secretary, Home (Police) Department, S. Patel Bhavan, Patna- 800022.
3. The Chairman, Union Police Service Commission, Delhi- 110069.
4. The Deputy Secretary, Home Police Department, Govt. of Bihar, S. Patel Bhavan, Patna- 800022.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Arvind Kumar
For the U.P.S.C.	:	Mr. Kaushal Kumar Jha, Sr. Advocate
		Mr. Avnish Kumar, Advocate
		Mr. Rajan Prakash, Advocate
		Ms. Pankhuri, Advocate
For the Respondent/s	:	Mr. Ajay Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 29-11-2023

The petitioner has assailed orders of the Central Administrative Tribunal (hereinafter referred to as ‘the Tribunal’) dated 28.02.2023, passed in O.A./ 050/00156 of 2023. The grievance of the petitioner is that he is entitled to promotion to the post of Staff Officer which is the State of Bihar cadre.



2. Petitioner was appointed to the post of Deputy Superintendent of Police on 06.02.1997 and earned promotion to the post of Sr. Deputy Superintendent of Police and Additional Superintendent of Police on 15.05.2007 and 31.12.2012 respectively. When things stood thus he was promoted to the I.P.S. cadre on 26.05.2017. Thereafter, juniors to the petitioner were stated to have been promoted to the post of Staff Officer which is the State of Bihar cadre on 04.05.2018. thereafter, they were also promoted to the post of I.P.S. Faced with these material information, the grievance of the petitioner is that he is also entitled to be promoted to the post of Staff Officer on par with his juniors. It is submitted that there were certain inaction on the part of the State respondents in not promoting 2014 batch to the post of I.P.S. Due to which, petitioner who was in the select list of 2015 was not promoted. In other words, seniors to the petitioner's name was not timely considered and resulted in delay of promotion to the petitioner.

3. Learned counsel for the petitioner submitted that the Tribunal has failed to appreciate and consider pay anomaly among the petitioner and his juniors who were promoted to the post of Staff Officer, State of Bihar cadre on 04.05.2018 and thereafter, they were promoted to the I.P.S. thus, there is a pay



anomaly among the junior and senior. In other words, petitioner who is senior is entitled to have pay on par with immediate juniors who were drawing more than the petitioner.

4. Per contra, learned counsel for the respondents resisted the aforesaid contention and submitted that there is no infirmity in the orders of the tribunal dated 28.02.2023. Question of consideration of the petitioner's grievance on par with his immediate junior to the Staff Officer as and when they were promoted on 04.05.2018 is not permissible in view of the fact that as on 04.05.2018, petitioner was already promoted to the post of I.P.S. on 26.05.2017. If he has not been promoted to the post of I.P.S. as on 04.05.2018, in that event, petitioner would have claimed the promotion to the post of Staff Officer among his juniors read with the pay that is being drawn by the petitioner's junior.

5. Heard learned counsels for the respective parties.

6. Core issue involved in the present lis is whether is their pay anomaly among the petitioner and his juniors or not? It is undisputed that the petitioner was appointed as the Deputy Superintendent of Police and promoted to the post of Sr. Deputy Superintendent of Police and Additional Superintendent of Police. For want of vacancies, he was not promoted to the post



of Staff Officer, State of Bihar cadre. On the other hand, before considering his name for promotion to the post of Staff Officer in the State of Bihar cadre, his name was considered for I.P.S. on 26.05.2017, thereafter, vacancy in the rank of Staff Officer was available only on 04.05.2018 and the junior's name was considered. In other words, as on 04.05.2018, the date on which vacancy of Staff Officer occurred, petitioner had already had the benefit of I.P.S. promotion, therefore, question of pay anomaly among the senior and junior cannot be examined for the reasons that pay anomaly existing among the petitioner and juniors on 04.05.2018, the date on which petitioner's juniors were promoted to the post of Staff Officer and further, they were promoted to the post of I.P.S. On the other hand, as on 04.05.2018, the date on which pay anomaly occurred the petitioner was not holder of the post in the Staff Officer. On the other hand, he was already elevated to the I.P.S. on 26.05.2017, therefore, question of pay anomaly or stepping up or pay and pension cannot be examined in the absence of service condition among the senior and junior being the same as on 04.05.2018.

7. Recently Apex Court in the case of State of M.P. vs. R.D. Sharma (2022) 13 SCC 320, examined parity in employment read with Equal pay for Equal work. Para 15 to 17



reads as under:

15. Since Respondent 1 had retired as the PCCF in the year 2001 that is much prior to the coming into force of the Amended Rules, 2008, his claim to get the benefit of the apex scale as per the said Rules was thoroughly misconceived. The apex scale of Rs 80,000 was fixed for the upgraded post designated as the Head of Forest Force w.e.f. 27-9-2008 and was to be filled up by way of selection and not as a matter of course. It is needless to say that filling up a post by selection would always require a process of screening the eligible employees, and cannot be automatic on the basis of seniority. The contention raised by Mr Gupta for Respondent 1 that even prior to the amendment in the rules in the year 2008, the officers working on the post of PCCF were the Head of the Forest Force and Respondent 1 was also working as such, cannot be accepted, for the simple reason that if all the officers working on the post of PCCF were also working as the Head of the Forest Force, there was no need to upgrade one existing post of PCCF in the apex scale of Rs 80,000 and designate it as the Head of the Forest Force, w.e.f. 27-9-2008, as specifically provided in sub-rule (1) of Rule 3 of the Amended Rules, 2008. Rule 11 of the said Amended Rules, 2008 also specifically reiterates the said position about upgradation and designation of the post of PCCF as the Head of Forest Force in the State of Madhya Pradesh, as in other States and Union Territories.

16. The High Court in the impugned orders passed in writ petition as well as in the



review petition had thoroughly misdirected itself by applying the principle of "equal pay for equal work" placing reliance on the decision of this Court in State of Punjab v. Jagjit Singh, which had no application to the facts of the present case.

17. It may be noted that this Court has consistently held that the equation of post and determination of pay scales is the primary function of the executive and not the judiciary and therefore ordinarily courts will not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions. This is because such job evaluation exercise may include various factors including the relevant data and scales for evaluating performances of different groups of employees, and such evaluation would be both difficult and time consuming, apart from carrying financial implications. Therefore, it has always been held to be more prudent to leave such task of equation of post and determination of pay scales to be best left to an expert body. Unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post, and that the court's interference was absolutely necessary to undo the injustice, the courts would not interfere with such complex issues. A beneficial reference of the observations made in this regard in Secy, Finance Deptt. v. W.B. Registration Service Assn be made. As held in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn equal pay for equal work" is not a fundamental right vested in any employee, though it is a constitutional goal to be achieved by the Government.



8. In view of these facts and circumstances, the petitioner has not made out a case. Accordingly, Writ petition stands dismissed while affirming the order of the Tribunal.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Guddu/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	2/12/2023
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