

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-9380-2019
Date of Decision: 01.02.2024

Sandeep Singh and another

...Petitioners

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. R.D. Bawa, Advocate and
Mr. Randhir Bawa, Advocate and
Mr. Dipanshu Kapur, Advocate for the petitioners

Ms. Gehna Vaishnavi, Central Govt. Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking direction to the respondents to grant upgraded pay scale of ₹5000-8000/- for the purpose of pay fixation w.e.f 01.01.1996 and its corresponding revised pay scale of ₹9300-34800/- with Grade Pay of ₹4200/- w.e.f 01.01.2006 to the post of Draughtsman Grade-II (Civil).
2. The respondent in 2010 advertized different posts including post of Draughtsman Grade-II (Civil). The essential qualification prescribed for the post of Draughtsman Grade-II (Civil) was as below:-

“Essential Qualification

Passed 03 years Certificate/Diploma in Architecture/Draughtsmanship from a recognized institution or equivalent.

OR

Possessing National Apprenticeship Certificate issued by National Council for Vocational Training, Government of India, Ministry of Labour

OR

Passed Diploma Course in Draughtsman Estimating and Design from College of Military Engineering, Pune

OR

Passed 2 year National Trade certificate for Draughtsman (Civil) and having one year practical experience in the trade.”

3. The petitioners were possessing 3 years Diploma in Architecture and they participated in the selection process. They came to be selected in 2011 and accordingly joined service. The Central Government has accepted recommendation of 6th Pay Commission and implemented it w.e.f. 01.01.2006. In the recommendations of Pay Commission, in Para No.7.39.22, it has been enjoined that posts of Overseer (Civil), Border Roads Organization, for which minimum qualification for direct recruitment is Diploma in Engineering, be merged with Superintendent BR Grade-II and be placed in the upgraded pay scale. The pay scale for the post of Overseer (Civil) as on 01.01.1986 was ₹975-1540/- and on 01.01.1996 was ₹3200-4900/-. The pay scale of Superintendent BR Grade-II was ₹1400-2300/- w.e.f. 01.01.1986 and w.e.f. 01.01.1996 it was ₹4500-7000/-. Both the posts were

proposed to be merged and placed in upgraded pay scale of ₹5000-8000/-. In the said paragraph, it was further provided that posts similarly placed and carrying minimum Diploma in Engineering should also be extended said pay scale. Para 7.39.22 of the recommendations reads as under:-

“7.39.22 Higher pay scale has been demanded for the post of Overseer (Civil) in Border Roads Organization on the ground that the minimum qualification for the post is Diploma in Engineering. The post carries minimum direct recruitment qualification of Diploma in engineering. These minimum qualifications had been prescribed in 1996. Fifth CPC, in their Report submitted in 1997, had recommended the scale of Rs.5000-8000 for all posts carrying minimum direct recruitment qualifications of Diploma in Engineering. This recommendation was accepted. The post should consequently have been extended the scale of Rs.5000-8000 w.e.f. 1.1.1996. This was, however, not done. The Commission, accordingly, recommends that the post of Overseer may be upgraded and merged with their promotional post of Superintendent BR Grade II (present scale Rs.4500-8000. Since the Commission has recommended merger of the scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, the post will be placed in the revised Pay Band PB-2 of Rs.8700-34800 along with a grade pay of Rs.4200. Commission also advises the Government to implement this retrospectively from 1.1.1996, at least for the purpose of fixation of pay.”

4. The Joint Director (Admn.) in its communication dated 13.05.2009 (Annexure P-3) has noted that case for upgradation of pay scale of

₹5000-8000/- in respect of different categories of employees was forwarded to Secretary, BRDB, who in turn has suggested to forward a consolidated proposal. The relevant extracts of communication dated 13.05.2009 read as:

“UPGRADATION OF PAY SCALES IN RESPECT OF DIRECT RECRUITMENT DIPLOMA HOLDERS AS PER RECOMMENDATIONS OF 6TH CPC

1. It is intimated that a case for upgradation of pay scale of Rs.5000-8000/- (Pre-revised) and revised pay of Rs.9300-34800 with Grade pay of Rs.4200/- in respect of following categories who are similarly placed and carrying minimum qualification of three years diploma in Engineering was forwarded to Sectt BRDB:-

- a) Charge Mechanic*
- b) Charge Electrician*
- c) Assistant Chargeman Operator (Signalas)*
- d) Chargeman Signals*
- e) Store Supur Grade II*
- f) Draughtsman Grade II (Civil)*
- g) Draughtsman Grade II (Mech)*

2. In turn, Sectt BRDB has suggested to forward a consolidated proposal in respect of those posts where minimum entry level qualification for direct recruitment is three years diploma in engineering or equivalent as per Recruitment & Promotion Rules 1982.”

5. It is apt to notice that a detailed discussion was made in the report of January 2009 (Annexure P-4). The relevant extracts of the report read as:-

“1. It is intimated that Sixth Central Pay Commission vide Para 7.39.22 of their report recommended that the

post of Overseer in BRO be upgraded and merged with their promotional post of Superintendent BR Grade II pre-revised scale Rs.4500-7000) and the combine cadre extended the scale of Rs.5000-8000 (Encls 1A) which has been approved by the Govt.

2. The pay commission vide para 7.39.23 of their report, also recommended that the post of Superintendent Grade II be placed in the pay band PB-2 of Rs.8700-34800 alongwith grade pay of Rs.4200/- corresponding to the pre-revised scale of Rs.5000-9000 and Rs.6500-10500. The other posts similarly placed and carrying minimum qualification of Diploma in Engineering should also be extended this pay scale. The above recommendation has also been approved by the Govt. (Encl-1B).”

6. The Joint Director (Admn) vide communication dated 05.01.2010 (Annexure P-5) further forwarded the matter to Sectt. BRDB. In the said communication, it was noticed that Draughtsman Grade-II (Civil/Mechanic) where minimum entry level qualification is three years Diploma in Engineering or equivalent would be entitled to revised pay scale of ₹9300-34800/-. The relevant extracts of the communication dated 05.01.2010 read as:

“2. A statement of Case for grant of revised pay scale of Rs.9300-34800 with grade pay of Rs.4200/- to the trades of Asst. Chageman Operator (Sigs), Chageman (Sigs), Supvr Stores Gde-II and Draughtsman Gde-II (Civ/Mech) where minimum entry level qualification for direct recruitment is three years diploma in engineering or equivalent as per Recruitment & Promotion Rules 1982 at par with diploma holder Overseers, Charge Mechanical, Charge Electrical and Supdt+Gde-II (Civ/Mech) who have already been granted the revised

pay scale of Rs.9300-34800 with Grade Pay of Rs.4200/- as per Sectt BRDB letter No.BRDB/03/191/2007/GE-I dated 25 Feb 2009 and 21 May 2009 is forwarded herewith duly concurred by IFA(BR).”

7. The Gauhati High Court in ***GS-161752 OVSR Ghanashyam Vishwakarma V. Director General, Border Roads Organisation and others, 2010 SCC OnLine Gau 416*** had occasion to consider, in view of recommendations of 6th Central Pay Commission, question of revision of pay scale of a promotee regular Overseer who did not possess qualification of Diploma in Engineering. The minimum qualification prescribed for direct recruitment for the said post is Diploma in Engineering whereas promotee do not need to possess said qualification. The Court vide judgment dated 10.09.2010 concluded that the petitioner is entitled to pay scale of ₹5000-8000/- w.e.f. the Overseer with Diploma in Civil Engineering enjoyed the revised pay scale. The operative portion of the aforesaid judgment is reproduced as below:

“26. In the present case the executive instruction/decision vide the impugned letters dated 3.10.2008 (Annexure No. 6), 11.5.2009 (Annexure No. 12 and 4.5.2009 (Annexure No. 13) which are in derogation of the Central Civil Service (Revised Pay) Rules, 2006 for the post of Overseer and also the recommendation in para 7.39.22 of the 6th Central Pay Commission, which has been approved by the Central Government by necessary enactment of the Rules, i.e., the said Rule, are Illegal and not acceptable under the law. For the foregoing reasons and discussions, this court has no alternative except to direct the respondents,

in the given case, to revise the pay scale of the petitioner, who is working as regular Overseer at the scale of Rs. 5,000-8,000 per month with effect from the date the Overseers with Diploma in Civil Engineering enjoyed the revised pay scale of Rs. 5,000-8,000 per month as per the recommendation of the 6th Central Pay Commission, which has been accepted by the Government of India; and also pay the arrear pay and allowances within four months from the date of receipt of this judgment and order. The corollary result would be that the said impugned letters or/decisions of the respondents, dated 3.10.2006 (Annexure No. 6), letter dated 11.5.2009 (Annexure No. 12) along with letter dated 4.5.2009 (Annexure No. 13) mentioned above for denying the revision of pay scale-of the petitioner at Rs. 5,000-8,000 per month only because the petitioner is not Diploma holder are hereby quashed. Writ petition is allowed, accordingly.”

8. Pursuant to the aforesaid judgment, a number of employees of respondent filed writ petitions before Gauhati High Court claiming higher grade pay in terms of report of 5th and 6th Pay Commission. The Gauhati High Court vide judgment dated 01.02.2011 in ***Pramod Singh and others v. Union of India and others, WP (C) No.3756 of 2009***, applying the principle of equality as contemplated by Article 14 of the Constitution of India, concluded that petitioners who have alternative qualifications are entitled to higher pay scale as has been extended to Diploma Holder Charge Mechanic. The relevant extracts of the said judgment read as:-

“10. I have given my anxious consideration to the submissions made by the learned counsel for the parties and the materials available on record. The relevant recommendation made by the 6th CPC has been quoted

above. Dealing with the post of Overseer (Civil) in the BRO, the 6th CPC has noted the minimum direct recruitment qualification for the post of Overseer (Civil). Referring to the recommendation of the 5th CPC in their report submitted, in 1997 by which a recommendation was made for the scale of pay of Rs. 5000-8000/- for all posts carrying minimum direct recruitment qualification diploma in Engineering which was accepted, it was recorded that consequential action was not taken. Accordingly, it was recommended that the post of Overseer should be upgraded and merged with their promotional post of Superintendent (Br.) Grade-II and the combined cadre be the extended scale of pay is Rs. 5000-8000/-.

11. Dealing with the cadre of Superintendent Grade-II, the 6th CPC also noted that the said post in the Civil Engineering and Electrical & Mechanical cadre have been extended the pay scale of Rs. 4500-7000/-, even though the minimum qualification for direct recruitment included diploma in Engineering. Noticing the recommendation of the 5th CPC for placement of all posts requiring minimum entry level qualification for direct recruitment of diploma Engineering as Rs. 5000-8000/-, it was also noticed that even though the recommendation was accepted by the Govt., but the same had been extended in respect of the posts because only some of the posts are filled through direct recruitment. It was categorically stated that such an interpretation was not correct interpretation of the 5th CPC recommendation as per which all posts carrying minimum qualification requiring diploma in Engineering for direct recruitment had to be placed in the scale of pay of Rs. 5000-8000/-. Significantly it was noted that the post of Superintendent Grade-II has an

element of direct recruitment minimum qualification for which is diploma in Engineering.

12. Nowhere in the aforesaid recommendation the category of employees possessing alternative qualification has been excluded from the purview of upgradation to the said pay scale. Due emphasis was given on the post and not in the incumbents concerned. Further, what has been emphasised is that such upgradation should be provided to where there is element of direct recruitment of the incumbents possessing diploma in Engineering. The recruitment rules itself provides alternative qualification which the petitioners do possess. Any interpretation other than the plain and unambiguous meaning effected in the said recommendation will amount to giving a different meaning to the said recommendation.”

9. Learned counsel for the petitioner submits that case of the petitioner is squarely covered by judgments of Gauhati High Court in ***Pramod Singh (supra)*** and ***Ghanashyam Vishwakarma (supra)***. The respondents vide communication dated 25.10.2013 (Annexure P-14) have implemented judgments of Gauhati High Court. In the said communication, it has been specifically clarified that benefit of the judgment would be available to all the similarly situated non-diploma holders. The respondents have extended benefit of re-fixation of pay in terms of recommendations of the 5th and 6th Pay Commission even to non-diploma holders whereas petitioners are three years Diploma Holders in the Engineering. The petitioners were appointed against posts for which ITI was also one of the alternative qualification. The petitioners cannot be denied benefit of higher pay scale because they are

diploma holders and ITI was alternative qualification along with other options.

10. *Per contra*, learned counsel for the respondents submits that minimum qualification for the post of Draughtsman Grade-II (Civil) apart from diploma holder, was 2 years certificate from ITI, thus, petitioners cannot claim parity with diploma holders. She attempted to distinguish judgments of Gauhati High Court on the ground that Draughtsman may be holding two years certificate from ITI, thus, petitioners cannot be extended benefit of revised pay scale in terms of recommendations of 6th Pay Commission. The nature of work of Draughtsman is different from other employees, thus, they cannot be extended benefit as available to other employees.

11. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

12. The conceded position emerging from record is that petitioners are working with respondent as Draughtsman Grade-II. They were appointed in 2011. The minimum qualification for the post of Draughtsman Grade-II was three years Diploma in Architecture/Draftsmanship and two years National Trade Certificate for Draughtsman (Civil) with one year practical experience was alternative qualification. The petitioners are three years Diploma Holder in Architecture. The respondent vide communication dated 13.05.2009 and 05.01.2010 has formed an opinion that revised pay scale should be available to all similarly placed employees who are carrying three years Diploma in Engineering or equivalent. In the said communication, the post of Draughtsman Grade-II was considered along with other posts like

Charge Mechanic and Charge Electrician. The respondent has implemented judgments of Gauhati High Court and extended benefit of revised pay scale even to non-diploma holders.

13. The 6th Pay Commission while dealing with the post of Overseer (Civil) in the Border Road Organization noted minimum qualification for the direct recruitment and noticing recommendation of 5th Pay Commission, recommended for pay scale of ₹5000-8000 for all the posts carrying qualification of Diploma in Engineering for direct recruitment. It further recommended that post of Overseer should be upgraded and merged with its promotional post of Superintendent (BR) Grade-II and the combined cadre be extended scale of 5000-8000.

14. Gauhati High Court in *Ghanashyam Vishwakarma (supra)* extended benefit of higher pay scale to Overseers who had been promoted from different cadres and were not possession Diploma in Engineering. Ghanashyam was initially appointed as mason and he was simple higher secondary pass. He had passed matric and higher secondary after joining as mason. He was promoted on the post of Overseer against 90% quota for different lower posts.

In *Pramod Singh and others (supra)*, Gauhati High Court considered claim of vehicle mechanic, welder, turner and electricians who were promoted to the post of Charge Mechanic. The essential qualification for direct recruitment or through promotion for entry into cadre of charge mechanic was three years diploma and in alternative matriculate with ITI. The Court relying upon its earlier judgment in *Ghanashyam Vishwakarma*

(*supra*) extended benefit of higher pay grade to petitioners who were not possessing three years diploma in engineering but alternative qualification i.e. matriculation with ITI.

15. The Government of India vide communication dated 25.10.2013 (Annexure P-14) has implemented judgment of Gauhati High Court in ***Ghanashyam Vishwakarma (supra)***. The Government has further formed an opinion that benefit of judgment of Gauhati High Court should be extended to similarly situated non-diploma holders of BRO/GREF. The relevant extracts of communication dated 25.10.2013 read as:

“Subject: Implementation/extending the benefit of Hon’ble Guwahati High Court’s order dated 10.09.2010 in WP(C) No.51/2009 filed by Shri Ghanshyam Vishwakarma (a non Diploma overseer) to all the similarly situated Non Diploma persons of BRO/GREF-reg.

The undersigned is directed to refer to the above subject and to enclose a copy of Ministry of Finance (Department of Expenditure) U.O. No.10(17)/E.III.B/2012 dated 04.10.2013 conveying the decision of the Government to implement/extend the benefit of order of the Hon’ble Guwahati High Court dated 10.09.2010 in WP No 51/2009 (Ghanshyam Vishwakarama case) to similarly placed persons, provided they are similar in all respect, received through Ministry of Defence (Fin/BR) ID No.19(2)/2002/BRS(1030/BRS/13) dated 10.10.2013.”

16. From the perusal of judgments of Gauhati High Court, it is evident that Court has formed an opinion that benefit of revised pay scale should be available even to non-diploma holders. Employees working as

Charge Mechanic or Overseers though not possessing Diploma in Engineering have been extended benefit pay scale at par with Charge Mechanic or Overseers possessing Diploma in Engineering. The Court has considered that employees cannot be denied higher grade on the ground that they are possessing alternative essential qualification. The respondent in its different communications has considered Charge Mechanic at par with Draughtsman Grade-II. The respondent has further accepted judgment of Gauhati High Court and formed an opinion that benefit of said judgment should be extended to similarly placed employees. The petitioners are three years Diploma Holders in Engineering and respondent is denying benefit of revised pay scale on the sole ground that alternative essential qualification for the post of Draughtsman Grade-II is two years course of ITI. The qualification of two years course of ITI is an alternative qualification for the post of Draughtsman. The petitioners are three years Diploma Holders in Engineering and they were appointed on the basis of said qualification. The respondent has extended benefit of revised pay scale even to non-diploma holders, thus, it is iniquitous to deny benefit of revised pay scale to the petitioners who are three years Diploma Holders in Engineering.

17. In the wake of above facts and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioners are entitled to pay scale as admissible to Charge Mechanics. It is made clear that petitioners would be entitled to pay revision from the date of their entitlement, however, they would be eligible to arrears from the date of filing writ petition because despite judicial

precedents, respondent opted to remain silent. They shall further be not entitled to interest on arrears.

(JAGMOHAN BANSAL)
JUDGE

01.02.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>