
(1971) 01 AHC CK 0006
In the Allahabad High Court
Case No : Writ Petition No. 973 of 1969

D.N.V. Chellam and Others	Vs	APPELLANT
The Railway Board and Others		RESPONDENT

Date of Decision : 08-01-1971

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309

Citation : AIR 1971 All 382

Hon'ble Judges : K.B. Srivastava, J

Bench : Single Bench

Advocate : B.C. Saxena and S.D. Misra, for the Appellant; N. Banerji, for Opposite Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

K.B. Srivastava, J.—The petitioners D. N. V, Chellam, K. N. Ganesh Kumar and K. K. Maniar in this writ petition under Article 226 of the Constitution pray for the issue of a writ of certiorari quashing the order (Annexure 3), dated September 17, 1969, passed by the Railway Board, opposite party No. 1 and for the issue of a writ of mandamus directing the Railway Board, Director General, Research, Designs and Standards Organization (hereinafter referred to as the RDSO), opposite party No. 2, and the Assistant Accounts Officer, R. D. S. O., opposite party No. 3. not to withdraw the special pay of Rupees 150/- admissible to them.

2. The facts giving rise to this petition may now be narrated. Petitioner No. 1 (D. N. V. Chellam) was initially appointed as Senior Draughtsman, a class III-post in the Mechanical Research Branch of the erstwhile Central Standards Office (now the RDSO) on 25-8-1949 and was eventually promoted as a Sectional Officer on January 19, 1949 and confirmed as such on March 3, 1966. The petitioner No. 2 (K. N. Ganesh Kumar) was appointed as Design Assistant A, a class III post in the Central Standards Office (now the RDSO) on March 7, 1957 and was in due course promoted as a Sectional Officer on February 19, 1961. The petitioner No. 3 (K. K. Maniar) entered service as an apprentice Train Examiner on January 11,

1957 but was seconded as Design Assistant B, a class III post in the R. D. S. O., on December 16, 1963 and in due course was promoted as a Sectional Officer on May 14, 1968.

3. The post of a Sectional Officer is a gazetted Class II post. The prescribed Class II scale of pay for Sectional Officers was Rs. 275-25-500--EB-30-650-EB-30 800 plus a special pay of Rs. 150/-. This pay scale was substituted by the Railway Services (Authorised Pay) Rules, 1960 which came into force on July 1, 1959. The first two petitioners belonged to the R. D. S. O. as such, while the third petitioner belonged to the Railway Services but was seconded to the R. D. S. O. They opted or be deemed to have opted the Authorised Scales of Pay from July 1, 1959. The authorised pay scale for a Sectional Officer is Rs. 350-25-500-30-590 EB 30-800 EB-830-35-900 plus a special pay of Rupees 150/- Petitioner No. 1 was drawing the maximum of the scale, that is to say, Rs. 900/- plus a special pay of Rs. 150/-petitioner No. 2 was drawing Rs. 770/-plus special pay of Rs. 150/- and petitioner No. 3 was drawing Rs. 560 plus Rs. 150/- on the date of the impugned order. The Railway Board appointed a committee to go into the question of continuance or the withdrawal of special pays to officers serving in the R. D. S. O. This committee submitted a report and on its basis, the Board passed the impugned order, (Annexure 3) on September 17, 1969 under which the special pay of Rs. 150/- admissible earlier to a Sectional Officer was withdrawn though it was continued in respect of certain other Sectional Officers.

Upon the receipt of that order, opposite party No. 2, circulated a notice (Annexure 2) on October 4, 1969 to all Sectional Officers informing them that special pay would be withdrawn with effect from September 1, 1969 and their individual pays will be refixed. The petitioners pray for the issue of above writs on the following grounds:--

(1) That their drawal of the special pay of Rs. 150/- per month was part and parcel of the Authorised Scale of Pay and the Railway Board had no authority to withdraw that scale of pay, including the special pay.

(2) That in case the Railway Board desired to withdraw the special pay they (the petitioners) should have been given an opportunity to be heard and to represent then: point of view, and in not affording that opportunity, the Board had violated the principles of natural justice.

(3) That by the impugned order, the Board had made a discrimination in two respects, namely, between the Sectional Officers, on the one hand, and some other officers, on the other hand, inasmuch as while special pay had been withdrawn from them, it was continued to those others, and secondly, there was a discrimination between the Sectional Officers inter se inasmuch as while it was continued in respect of some of them, it was withdrawn from, other Sectional Officers including the petitioners, and

(4) If the Board intended to make a classification between Sectional Officers and other officers, or between Sectional Officers inter se, that classification is

violative of Article 14 of the Constitution because there is no intelligible differentia in the classification as such and there is no reasonable nexus between one group and the other on the ground that the arduous nature of duties, the element of special responsibility, and the nature of their avocation is the same.

4. No other point was pressed in the writ petition, although several others were taken.

5. There appears to be no substance in the first contention of the learned counsel for the petitioners. The Railway Services (Authorised Pay) Rules, 1960 were made by the President in exercise of his powers conferred by the proviso to Article 309 of the Constitution. These are, therefore, statutory Rules. The Authorised Scales of pay are contained in Schedules issued under Railway Services (Authorised Pay) Rules. Part I, page 8, shows that a special pay of Rs. 150/- was admissible, in addition to the grade pay to such Sectional Officers as were in the pre-1931 scale of pay. When this scale of pay was revised and substituted by the Prescribed Scale of Pay, the special pay of Rs. 150/- per month was continued. When this Prescribed Scale of pay was substituted on July 1, 1959 by the Authorised Pay Rules, the special pay of Rs. 150/- per month continued to apply to them. The question that arises, therefore, is as to whether this special pay of Rs. 150/- can be withdrawn by an executive order. The contention of the learned counsel for the petitioner is two-fold. The first contention is that the special pay was guaranteed and, therefore, it cannot be withdrawn, and the second contention, if it can be withdrawn, it can be brought about only by amendment of the Authorised Pay Rules under Article 309 of the Constitution and by the President alone and not by the Railway Board. There seems to be no force in the first contention. A similar point arose for determination in *Roshan Lal Tandon Vs. Union of India (UOI)*, Referring to that matter, Ramaswami, J., speaking for the Court, made the following observation :--

"We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade "D" and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board..... It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee."

This is high authority and clinches the matter altogether. There is force in the second contention provided it is well founded in fact. No statutory rule can be modified or altered by an executive order, howsoever high the authority issuing the modifications or alterations may be. The President had passed the Authorised Pay Rules in exercise of his powers under the proviso to Article 309 and, therefore, it follows that the President alone can modify or alter it. Annexure 3 upon which the petitioners pin their faith, clearly mentions that "this has the sanction of the President and takes effect from 1st September, 1969". It is obvious, therefore, that the order contained in Annexure 3 was actually passed by the President though it was issued in his name by the Railway Board. The argument that Annexure 3 does not say that the President passed this order under the proviso to Article 309 does not alter the position. If the order is one which was within the competence of the President to pass, it is immaterial that the President has not mentioned the power under which he passed it, because that power must be founded under the proviso to Article 309. That being so, this contention is overruled.

6. There seems to be no force in the second contention also that there was violation of the principles of natural justice. This principle has to be followed by judicial or quasi judicial bodies and not ordinarily by an administrative authority, unless that authority has a duty to act judicially or quasi-judicially. Once it is held that the pay can be withdrawn unilaterally by the President, and without the consent of the petitioners, no question would arise of their being heard before the order of withdrawal is passed. This contention also, therefore, has no basis.

7. Annexure 3 shows that special pays admissible to Sectional Officers. Liaison Engineers, Joint Engineers. Assistant Controller of Stores and some other officers were withdrawn while it was continued to Senior Inspecting Engineers, Inspecting Engineers Secretary to the Director General. Dynamometer Car Officers, Oscillograph Car Officers. Chief Technical Assistants. Head Telephone Operators. Telephone Operators, and some other members of the staff. It is on this basis that it has been argued that there was discrimination between the Sectional Officers and officers other than Sectional Officers. It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled (1) that the classifications must be founded on an intelligible differentia which distinguishes persons or things and (2) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question. The classification may be founded on different basis, namely, geographical or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object under consideration. See *Babulal Amthlal Mehta Vs. The Collector of Customs, Calcutta*, and *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*,

That being so, the President was entitled to classify the personnel of the R. D. S.

O. into groups. The classification made must be taken to be constitutional and valid, unless differentiation or discrimination is established. The presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The same applies to statutory rules, as distinguished from an Act of Parliament or a Legislature. See *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, Again, to make out a case of denial of the equal protection of the laws under Article 14 of the Constitution a plea of differential treatment is by itself not sufficient and the applicant pleading that equal protection of the laws has been denied to him must make out that not only he had been treated differentially from others but he has been so treated from, persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made.

In considering the validity of a statute under Article 14 the Court cannot ignore the well established principle that the legislature can make class legislation provided the classification on which it purports to be based is rational and has a reasonable nexus with the object intended to be achieved by it, and so, on the failure of the party to show that the said classification is irrational, or has no nexus with the object intended to be achieved by the impugned Act, the initial presumption of constitutionality would help the State to urge that the failure of the party challenging the validity to rebut the initial presumption goes against his claim that the Act is invalid. In all cases where the material adduced before the courts in matter relating to Article 14 is unsatisfactory, the Court may have to allow the State to lean on the doctrine of initial presumption of constitutionality. See *State of Madhya Pradesh Vs. Bhopal Sugar Industries Ltd.*, *Rani Ratna Prova Devi Rani Saheba of Dhenkenal Vs. State of Orissa and Another*, and *Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others Vs. State of Andhra Pradesh etc.*, and *Cochin Devaswom Board, Trichur Vs. Vamana Shetty and Others*, In the instant case, there appears to be no connection or affinity between Sectional Officers and those officers mentioned in Annexure 2 and Annexure 3. Nothing has been alleged to show the nature of the duties to be performed by, say, the senior Inspecting Engineers, the Inspecting Engineer, etc. and the Sectional Officers. Their domain or field of work may be wholly different from that of the Sectional Officers. The impugned annexure, therefore cannot be struck down on the ground of discrimination between the Sectional Officers and those others.

8. I now come to the alleged discrimination between Sectional Officers inter se. Even under the Authorized Pay Rules, certain Sectional Officers were not allowed to draw any special pay, e.g. Sectional Officers in the Architectural Directorate. However, it appears to have been allowed to all other Sectional Officers. I may here mention that the source of recruitment of Sectional Officers is either by promotion of Class III personnel in the R. D. S. O. office itself or of officers in the Railway Establishment (other than the R. D. S. O.) when seconded to the R. D. S. O. for appointment as Sectional Officers. This fact is not disputed, and indeed

while the first two petitioners were promoted from class III post in the R. D. S. O. itself the third petitioner was drafted from the Railway Establishment to the R. D. S. O. Their mode of recruitment may differ and the nature of their duties will certainly differ, if they continue to be borne on their parent cadres. Special pay, as defined by Rule 2003, Railway Establishment Code, Volume II, means an addition, of the nature of pay to the emoluments of a post or of a Railway servant, granted in consideration of (a) the specially arduous nature of the duties, or (b) a specific addition to the work or responsibility.

The petitioners have not given any grounds to show that the nature of their duties is arduous or there has been any specific addition to their work or responsibility. It is true that special pays were granted to them and that must be taken to have been on the footing that grounds mentioned in Clause (a) and/or (b) Sub-rule (26) of Rule 2003 existed or were deemed to have existed when the special pays were granted. The appointing authority, however, is at liberty to review the matter. The authority, competent to sanction the special pay is also competent to withdraw it. Fundamental Rule 2003 (26), as contained in the Compendium of Rulings, Appendix XXX Railway Establishment Code, Volume II says that the power of granting of special pay shall be exercised only by the authority empowered to regulate the scales of ordinary pay. This power, therefore, can be exercised from time to time and not once for all by the President. The President might have thought that the grounds on which the special pay was granted earlier, were not substantial or were unjustified, and the facility should be withdrawn. The presumption of constitutionality as the basis of the withdrawal must ensure, unless discrimination is established as a fact.

Annexure 3 says that the pay of Class III staff of the R. D, S. O. promoted as Sectional Officers should be fixed by adding Rs. 100/- to the existing pay in Class III post if that gives a stage in Class II Scale, otherwise, at the stage, next above. It further says that Class III officers of the Railways seconded to the R. D. S. O. as Sectional Officers should be granted special pay of Rs. 100/- per month and, if such officers are posted as Assistant Directors, they should continue to be granted a special pay of Rs. 150/- per month, that being so, while Rs. 100/- was to be added to the pay of the promotes Rs. 100/- was granted as special pay to those seconded. These fall into two different groups, that is, one promoted from the R. D. S. O. and the other seconded from the Railways. A clarification was sought and the Railway Board clarified the position (vide Annexure 5). It says that the pay of such of the Sectional Officers as were regularly promoted to those posts prior to 1-9-1969 whose special pay is withdrawn from 1-9-1969 should be fixed by adding Rs. 150 to the pay admissible in Class II Scale as on 1-9-1969, if that gives a stage pay in Class II Scale. If that does not give a stage pay in Class II Scale, the pay should be fixed at the stage next below and the difference between the pay plus special pay previously drawn and the pay so fixed being treated as personal pay to be absorbed in future increments, provided the maximum of the Class II Scale not being exceeded. The date of their next increment will be the same as was due, if this fixation had not been

done. The only difference that was made was that the pay was to be added by Rs. 150/- and the difference, if any, was to be treated as special pay to be absorbed in future increments.

The Supreme Court upheld the classification of Assistant Secretaries and Deputy Secretaries in the Rajasthan Government Secretariat on the basis of different sources of recruitment. That being so, no exception can be taken to the grouping of those seconded as one category and the grouping of those promoted as a second category. There is no discrimination inter se between these two groups. There is an intelligible differentia between these two groups and there is reasonable nexus in the classification. It has been well settled that there can be different pays for the same kind of work. It was held by the Supreme Court in *Kishori Mohanlal Bakshi Vs. Union of India*, that the abstract doctrine of equal pay for equal work has nothing to do with Article 14 and Article 14, therefore, cannot be said to be violated where the pay scales of Class I and Class II Income Tax Officers are different though they do the same kind of work. See also *State of Mysore and Another Vs. P. Narasing Rao*,

9. To sum up the President had the power to withdraw the special pay. The withdrawal has not brought about any discrimination.

10. Altogether, therefore, this petition has no substance and must be and is hereby dismissed with costs.