

**(2009) 02 GAU CK 0064**  
**In the Gauhati High Court**

Hindustan Paper Corporation Ltd. (Officers and Supervisors Association) and Another APPELLANT

Vs

Hindustan Paper Corporation Ltd. and Others RESPONDENT

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**Date of Decision :** 12-02-2009

**Acts Referred:**

**Citation :** (2009) 5 GLR 584 : (2011) 1 GLT 374

**Hon'ble Judges :** B.K. Sharma, J

**Bench :** Single Bench

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**Judgement**

B.K. Sharma, J.—By this writ petition filed by the Hindustan Paper Corporation Ltd. Officers and Supervisors Association, a challenge has been made to the decision conveyed vide the Annexure-"L" letter dated 19.10.2006 by which the claim of the petitioners for removal of the alleged pay anomaly has been rejected. The further prayer made in the writ petition is to enhance the fixation benefit of the Supervisors who are the members of the petitioner-association with effect from 1.1.1997.

2. Shortly stated, the facts leading to the filing of the instant writ petition, as narrated in the writ petition, are that in the respondent-Corporation, there are 3 (three) categories of employees viz., (a) Workmen, (b) Non-unionized Supervisors and (c) Officers/Executives. In the workmen category, there are grades ranging from W-1 to W-9 whereas supervisory category, there are two grades namely, S-1 and S-2. Above the supervisory category, there are the executive category of various grades.

3. The pay structure of the workmen is determined by the bipartite settlement between the Trade Unions representing the workmen and the management. On the other hand, the pay structure, fitment benefits, etc., of the non-unionized supervisors and the executives are finalized unilaterally by the Corporation based on the directions issued by the Government of India in the particular Ministry, which is Ministry of Industry, Department of Public Enterprises.

4. In the year 2000, on the recommendation of the Justice Mohan Committee Pay Commission, pay scales of Officers and Supervisors of the Central Public Sector Enterprises were revised with effect from 1.1.1997 vide office memorandum dated 25.6.1999 issued by the Central Government. Thereafter, the Central Government vide its letter dated 25.9.2000 directed the respondent-Corporation to implement the said pay revision. In response to such direction, the respondent-Corporation by its Circular No. 27/2000 dated 29.9.2000 implemented the revision of pay for its employees, i.e., the Executives including the Non-Unionized Supervisors. In Clause 5.1 of the Circular, it was provided that while fixing the pay of Supervisors in the revised pay scales, they would be given the benefit of 20% of their existing basic pay.

5. The respondent-Corporation simultaneously revised the pay scale of the Workmen also in the year 2001 with effect from 1.1.1997 in terms of the policy of the Government of India in the department of Public Enterprises issued under office memorandum dated 14.1.1999. The respondent-Corporation by virtue of a Memorandum of Understanding dated 16.2.2001 implemented the revision of pay of the workers. In the Memorandum of Understanding, it was provided that the Workmen would be given the benefit of 25.5% of their existing basic pay along with one additional increment.

6. In paragraphs 7 and 9 of the writ petition, the petitioners have stated, thus:

7. That the petitioners beg to state that the fixation benefit given to the Workmen at 25.5% along with an additional increment as against the 20% given to the Executives and non-unionized Supervisors given effect from 1.1.1997 has affected a particular class of employees of the respondent-Corporation who were working as Supervisors (both S-1 and S-2 level) as on 31.12.1996. Those who became Supervisors after 1.1.1997 by way of promotion were not affected because on 1.1.1997 they were working as Workmen and naturally availed the higher fixation benefit given to them as workmen in the revision of pay w.e.f. 1.1.1997 and thereafter they became Supervisor in batches from the year 1998 onwards. The aforesaid affected Supervisors were initially 106 in number which has now come down to 63. The present petition has been filed to espouse the cause of these Supervisors. The petitioner No. 2 is one of them.

9. That the petitioners state that due to the higher fixation benefit of 1997 pay revision given to the Workmen category, the aforesaid Supervisors suffered not only in terms of basic pay but also the proportionate benefits of D.A., C.P.F. H.R.A., gratuity etc. which are related to the basic pay. Lesser amount of basic pay fetches lesser amount of all the allowances. Similarly the employees above the rank of Supervisors who are Executives have gained considerably as a result of higher time scale introduced by the 1997 revision of pay for them.

7. According to the petitioners, the Supervisors working in other Public Sector Undertakings also experienced the same grievance. Specific mention has been made of the National Thermal Power Corporation Limited (NTPC) and Bharat

Heavy Electrical Limited (BHEL). According to the petitioners, the said two PSUs while implementing the 1997 Pay Revision of Supervisors and Officers adopted a much higher pay scale and fitment benefits for the Supervisors with a view to honour the relativity principle, remaining within the parameters of the same DPE Guidelines.

8. The petitioners had earlier moved this Court by filing the writ petition being WP(C) No. 7837/2002 and the same was disposed of by order dated 6.4.2006 taking into account the judgment delivered by the Kerala High Court on the same issue. As per the direction contained in the said order, the respondent-Corporation was to consider the cases of the Supervisors of both the grades, i.e., S-1 and S-2 serving under the respondent-Corporation in the State of Assam. It was provided that the Supervisors in both the grades would make individual representation with regard to their grievance.

9. In compliance with the said direction of this Court, individual representations were made by the Supervisors. By the impugned order dated 19.10.2006, such representations having been rejected, the petitioners have once again approached this Court by filing the instant writ petition.

10. I have heard Mr. K.N. Choudhury, learned senior Counsel assisted by Mr. D. Mazumdar, learned Counsel for the petitioners as well as Mr. S.N. Sarmah, learned Senior Counsel assisted by Mr. J. Roy, learned Counsel for the respondent-Corporation. I have also considered the materials on record and have given my anxious consideration to the same as well as the submission advanced by the learned Counsel for the parties.

11. While it is the case of the petitioners that there is pay anomaly, it is the case of the respondent-Corporation that it is not the case of any pay anomaly warranting removal of the same. It is the grievance of the petitioners that the Supervisors working in higher grades than that of the workmen who are getting lesser pay than the Workmen and the same being an anomaly elementary for removal of such pay anomaly, required to be removed by the respondent-Corporation. In the impugned order dated 19.10.2006, the respondent-Corporation has dealt with the principles relating to upgradation of pay of the seniors in relation to the juniors. The said principles have been enumerated as follows:

(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre.

(b) The pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay, should be identical.

(c) The senior officer at the time of promotion had been drawing equal or more pay than the junior, and

(d) The anomaly should be directly as a result of the application of the provisions

of FR 22(A)(1) or any other rule of order regulating the pay fixation on such promotion in the revised scale. For example, if even in the lower post the junior officer draws from time to time higher rates of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

12. It has been stated in the impugned letter dated 19.10.2006 that the seniority of the Executives of the Corporation in different pay scales is determined with reference to their cadre (in the line of promotion) and discipline and that the line of promotion is the channel of movement of an employee from a scale of pay to the next higher scale in his/her discipline. The incumbent has been informed of the said impugned letter dated 19.10.2006 that since his case does not fall in one of the above mentioned categories, there is no scope for stepping up of their pay as was claimed.

13. If we go by the stand in the writ petition, it is the own case of the petitioners that while the pay structure of the Workmen is determined by the bipartite settlement, the pay structures of the Supervisors and Executives are finalized unilaterally by the Corporation on the basis of the direction issued by the Government of India in the particular Ministry. The pay Scale of the Officers and Supervisors of the Central Public Sector Enterprises were revised with effect from 1.1.1997 vide office memorandum dated 25.6.1999 issued by the Government of India. The pay revision was implemented by the respondent-Corporation on the basis of the Central Government directives. It was provided that while fixing the pay of the Supervisors in the revised pay scale, they should be given the benefit of 20% of their existing basic pay.

14. The aforesaid pay revision effected in respect of the Supervisors did not have anything to do with the pay revision effected in respect of the Workmen pursuant to the bipartite agreement/Memorandum of Understanding dated 16.2.2001. Such pay revision of the Workmen effected and implemented was independent of the pay revision effected in respect of the Supervisors pursuant to the Central Government directives. In respect of the Workmen, it was provided that their fitment benefits would be 25.5% of their existing basic pay along with one additional increment unlike the Supervisors whose fitment benefit was fixed at 20%.

15. The petitioners understood well that they were getting lesser pay than the Workmen in view of such fitment benefits of 25.5% along with additional increment which is 20% in respect of the Executives and Non-unionized Supervisors. It is in this context, the petitioners have made the above-quoted statements in Paragraphs 7 and 9 of the writ petition. Thus, the purported pay anomaly is directly not attributable to a common and basic ground of pay fixation in respect of both the categories. While the pay revision in respect of the Executives and Supervisors were effected as per the Central Government directives, the pay revision of the Workmen was effected pursuant to the bipartite agreement/MoU. This is precisely the reason as to why the petitioners,

in effect, have questioned the pay revision effected to the Supervisors and Executives with effect from 1.1.1997 by the Central Government in the particular Ministry in the particular manner. It is one thing to say that that their pay revision with effect from 1.1.1997 was not effected properly, but it is another thing to say that their pay has been fixed anomalously compared to pay fixation benefit extended to the Workmen. This is precisely the reason as to why in Annexure-"K" representation dated 23.5.2006, the following statement was made:

Another fall out of the arbitrary 1997 pay revision was that the basic pay of those in W-9 category who became S-1 Supervisor after 1997, i.e., in the year 1998 and afterwards was fixed on much higher side than the basic pay of those S-1 supervisors who were promoted before 1997, i.e., between 1998 and 1993, although all were drawing same basic pay while in W-8 category. This difference ranges between Rs. 600 and Rs. 1,000.

16. Both the categories of the employees are not in the same category and thus, no comparison could be drawn. In this connection, the respondent-Corporation in their counter-affidavit, upon a reference to the circulars holding the field for both the categories of employees have given the details of the fitment benefits admissible to both the categories of employees. The Apex Court in the case of State of Andhra Pradesh and Others Vs. G. Sreenivasa Rao and Others, observed, thus:

15. "Equal pay for equal work" does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex-facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these grounds would be based on intelligible criteria which has rational nexus with the object sought to be achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal.

17. In Union of India and others Vs. O.P. Saxena and Others, the Apex Court, while interfering with the decision of the Tribunal directing stepping up of the pay of the respondents therein as not correct, upon a reference to the principles relating to stepping up of pay as contained in the Railway Rules, observed that two conditions, namely - (1) both the senior and junior officers should belong to

the same cadre and (2) the scales of pay of the lower and higher posts should be identical. In the said case, one Shri Kareer remained in the cadre of running staff by choice, but the respondents were promoted to the supervisory cadre. Thereafter, Shri Kareer on the one hand and the respondents on the other belonged to two different cadres. The pay of Shri Kareer was fixed according to the scales which were approved for the running staff including the running allowance. The Apex Court hold that the source of recruitment in the case of Shri Kareer vis-a-vis the respondents being different, the principle of stepping up of pay would not arise.

18. In the instant case, there is no dispute that both the categories of employees, i.e., the Supervisors and the Workmen are in different cadres. While the pay of the Workmen will be revised pursuant to the bipartite agreement/MoU, the pay revision in respect of the Supervisors was effected pursuant to the directions of the Central Government. In such a situation, if the Workmen uses to get more salary than that of the Supervisors, same cannot be said to be the case of pay anomalies. None of the elements attributable as pay anomaly, requires removal of the same at the intervention of the pay anomaly. The removal authority being present in the instant case, no interference is called for to the decision of the respondent-Corporation, which they have communicated individually to the Supervisors, one of which is the impugned Annexure-"L" communication dated 19.10.2006. If the petitioners are really aggrieved, they should not be agreed with the revision of pay scales effected in respect of the Supervisors and Executives with effect from 1.1.1997 to the Central Government. But such grievance cannot relate to the Workmen, whose pay revision was effected pursuant to the bipartite agreement/MoU. The respondent-Corporation, of their own, did not do anything but it simply followed the Central Government guidelines. The analogy, on which the petitioners have emphasized in reference to the other PSUs like, N.T.P.C., B.H.E.L., etc., cannot help the petitioners. If the said two PSUs of their own extend certain benefits to similar categories of employees, same binds the respondent-Corporation to follow the same rule. The respondent-Corporation will be bound on legal principles and not on the principles being followed in the said PSUs. Its case will have to be understood on the background in the fact situation involved about which discussions have been made above.

19. For all the aforesaid reasons, it cannot be said to be a case of pay anomaly requiring intervention of this Court so as to direct the respondent-Corporation to remove such pay anomaly and/or to step up the pay of the Supervisors. This, however, will not preclude the petitioners to approach the Central Government for appropriate relief in reference to pay revision effected with effect from 1.1.1997 with the 20% fitment benefit, which was 25.5% in respect of the workmen.

20. Writ petitions are disposed of with the above liberty to the petitioners. There shall be no order as to costs.