
(2012) 01 P&H CK 0187

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 13856 of 1990 (O and M)

K.S. Bhardwaj and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 39

Citation : (2013) 3 SLJ 80

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Singh, J.

C.M. No.5958 of 2011

1. For the reasons mentioned therein, C.M. is allowed.
2. Main petition is ordered to be restored to its original number.

Main Case

3. With the consent of both the parties, the main petition is taken up for final hearing today.
4. The petitioners have invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for issuance of directions to the respondents to grant the pay scale at par with other counter parts viz. Radio Wireless Operators in the department, in the pay scale of ` 1200-2100/-.
5. Respondent No. 2 while referring the matter to the Anomaly Committee, recommended the same pay scale to the Wireless Operators recruited during the year 1980 against the sanctioned posts in the year 1978, recommendation reads as under :

12 posts of Wireless Operators existing in 1971 in the pay scale of `150-180/- and these Wireless Operators were sanctioned for internal communication system for Civil Defence Towns. Government of India vide their letter No.1-12014/41/77-DGCD (Communs) dated 15-6-77 sanctioned 15 posts of Wireless Operators and 3 posts of Wireless Mechanics (Technicians) and asked the State Government to create these posts in the year 1977-78 on the basis of 100% reimbursement from Central Government. These Wireless Operators and Wireless Mechanics were required for external communication system. Accordingly these posts were recommended for creation in the scale of `150-180/-vide our No. 28-CD/DCD-77/A-2/16790 dated 12.8.77 and the Government sanctioned these posts in the scale of `125-150/-vide their letter No.242-2CD/78/2802, dated 9-2-78. These 18 posts were filled in 1980 in the revised scale of `400-660/-(old scale of `125-150). These incumbents after joining the Department started making representation for scale of `450-700/-which was being given to Wireless Operator enrolled earlier in the scale of `150-180/-. It is mentioned here that 16 Wireless Operators; 3 Wireless Mechanics enrolled in 1980 for external communication system have more responsibility compared to 12 Wireless Operators enrolled earlier for internal communication system as per Government of India instructions for external communication have to man 100 watt SSB HF Radio sets whereas Wireless Operator for internal communication system have to man 15/25 Watt VHP set. It is also added that the qualification for enrollment of wireless operator enrolled in 1980 is same as was for the Wireless Operators enrolled earlier. Similarly the qualification for which is also at par rather is more than Wireless Operator. Thus keeping in view the higher responsibility of Wireless Operator or external system or Wireless Mechanic, there is full justification for granting them pay at par with their colleagues enrolled earlier. It will not be out of place to mention here that construing Art. 14, 16 in the light of the Preamble and Art. 39(d) of the Constitution of India, it is clear that the principle "Equal pay for Equal work" is deducible and is required to be properly applied to cases of unequal scales of pay based on rational classification, where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. It is within the domain of the Executive Government and Expert besides like the Pay Commission to "Equate posts and pay" to remove injustice, come while fixing the new Grade of pay.

The 3rd Pay Commission has sanctioned `1200-2100/-to Wireless Operators who were enrolled in the pay scale of `150-180/- which was revised to `450-700/- by the 2nd Pay Commission. We should recommend to the Anomaly Committee for bringing parity for all the Wireless Operator and Wireless Mechanic.

6. Learned counsel for the respondents has vehemently argued that the petitioners could not be given same pay scale as to the pay scale of Wireless Operators because the reference sent to the Anomaly Committee was rejected by the Anomaly Committee.

7. While making reference to the Anomaly Committee State Government has admitted that Wireless Operators as well as Radio Wireless Operators are performing identical duties and qualification for both the posts is identical. Claim of the petitioners should not be rejected simply because Anomaly Committee has not accepted the recommendation.

8. Anomaly Committee nowhere says that duties and responsibilities of both the posts are different. Rejection of the claim of the petitioners on the ground they were appointed in the year 1978 on the agreed salary seems to be unjustified; Applying the principle "Equate posts and pay" petition deserves to be allowed.

9. Writ petition is allowed. Respondents shall fix the pay scale of the petitioners at par with Radio Wireless Operators w.e.f. 01.01.1986, the date of implementation of 3rd Pay Commission. Monetary benefits shall be released within six months.