
(1992) 11 CAL CK 0010
In the Calcutta High Court
Case No : C.O. No. 9036 (W) of 1991

Mr. Ibrahim Mollah and Another APPELLANT
Vs
Union of India (UOI) and Others RESPONDENT

Date of Decision : 17-11-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1994) 2 CALLT 410

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : A.P. Chatterjee, for the Appellant; Partha Sengupta and K.K. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Gitesh Ranjan Bhattacharjee, J.—The petitioners of this writ petition are employees of the respondent No. 2 Coal India Ltd. which is a Government of India Undertaking and are posted with the respondent No. 4 Central Coalfields Ltd. which is a subsidiary of Coal India Ltd. The petitioners are governed by the rules and regulations issued by the Coal India Ltd. (respondent No. 2) as well as the directives and policy decisions taken by said respondent. The petitioners were initially appointed in the non-executive cadre and were subsequently promoted to the executive cadre. As we get it from the affidavit-in-opposition, the petitioner No. 1 was promoted from the non-executive post of Accountant to the post of Accounts Officer in E-2 grade of the executive cadre on 7th August, 1987 and the petitioner No. 2 was promoted to the said grade of the executive cadre from the non-executive post of Accountant on 7th March, 1987. The executive cadre of the Coal India Ltd. (CIL) and its subsidiaries comprises different grades from E-1 to E-9 with varying pay scales for such grades. Although non-executives are promoted to executive cadre direct recruitment is also made in the executive cadre. Pay revisions are made from time to time by the Coal India Ltd. The pay revision in respect of non-executives is termed as

National Coal Wage Agreement (NCWA) and that in respect of executives is simply termed as pay revision. Earlier the NNCWA III was enforced with effect from 1st January, 1983 and the Third Pay Revision for executives was enforced with effect from 1st August, 1982 although the NCWA III for non-executives was promulgated on 11th November, 1983 and the Third Pay Revision for executives was promulgated on 28th May, 1984. Subsequently, NCWA IV was promulgated on 27th July, 1989 introducing new pay scales for the non-executives with effect from the 1st January, 1987 and the Fourth Pay Revision was promulgated on 5th April, 1991, introducing new pay scales for the executives with effect from the 1st January, 1987. It may be noticed that both the petitioners were promoted to the executive cadre after the 1st January, 1987 but long before the promulgation of the NCWA IV on 27th July, 1989 as well as the promulgation of the Fourth Pay Revision on 5th April, 1991. It is needless to mention that both the pay revisions for the executive and non-executive cadres made upward revision of pay scales of both the cadres.

2. The office Memorandum dated the 5th April, 1991 issued by the Coal India Ltd. which is Annexure-A to the writ petition contains the revised pay scales for the different grades of the executives under the Fourth Pay Revision. It is stated therein that the revision shall be effective from the 1st January, 1987. Paragraph No. 1 of the said office Memorandum enumerates both the existing pay scale and the revised pay scale of each grade of executives and also mentions in column-4 thereof fitment amount in respect of each grade of executives varying from Rs. 400/- to Rs. 1200/-. In paragraph No. 2 of the said office Memorandum, it is stated that the fitment amount would be admissible to the executives who were on the rolls of CIL and its subsidiaries as on 31st December, 1986 and continued to be on roll thereafter. The result is that no fitment amount becomes admissible to those who were promoted to the executive, cadre on or after the 1st January, 1987. Paragraph No. 3 of the said office Memorandum prescribes the method of fitment. According to that method the basic pay in the revised pay scale is to be fixed by adding the first ad hoc relief to the basic pay in the existing scale of pay as on the 1st January, 1987 and adding thereto the industrial D.A. as on the said date plus fitment amount as applicable. On the aggregate arrived at thus the pay is to be fixed in the revised scale and where the total does not fit in a stage of the revised scale of pay, the pay is required to be fixed at the next higher stage. Paragraph No. 4 of the said office Memorandum relates to direct recruits to the executive cadre appointed on or after the 1st January, 1987. It is stated therein inter alia that all executives appointed on or after the 1st January, 1987 would be deemed to have been appointed in the revised scales of pay and no fitment amount would be admissible to them. Paragraph No. 5 of the said office Memorandum provides that in so far as the case of executives promoted from non-executive to executive grades on or after the 1st January, 1987 is concerned, the matter was under examination and the orders would be separately issued shortly. In view of this paragraph No. 5 the said office Memorandum dated the 5th April, 1991 does not become applicable to

executives promoted from the non-executive cadre on or after the 1st January, 1987 so far it relates to fixation of pay in revised pay scale.

3. Thereafter the Coal India Ltd. issued the office Memorandum dated the 11th April, 1991 which is Annexure-D to the writ petition regarding the fixation of pay of the executives promoted from the non-executive cadre on or after the 1st January, 1987. The said office Memorandum was accompanied by certain statements of examples regarding fixation of pay. Soon thereafter however, Coal India Ltd. issued office Memorandum dated the 23rd April, 1991 by which certain arithmetical errors detected in the statements accompanying the earlier office Memorandum dated the 11th April, 1991 was corrected. Ultimately, however, the Coal India Ltd. in supersession of the pay fixation formula contained in the said Memoranda dated the 11th April, 1991 and the 23rd April, 1991 prescribed a new formula for the fixation of pay of the executives promoted from non-executive category to grade E-1 or E-2 of the executive category on or after the 1st January, 1987. The grievance of the petitioners is precisely against this office Memorandum dated the 30th May, 1991 regarding the pay fixation formula prescribed for executives promoted from the non-executive cadre on or after the 1st January, 1987 which is radically different from the pay fixation formula made applicable under the office Memorandum dated the 5th April, 1991.

4. The office Memorandum dated the 30th May, 1991 prescribes a pay fixation formula for executives promoted from non-executive category to grade E-1 or E-2 on or after the 1st January, 1987 in the following manner :

They may be brought on the NCWA IV scale of pay. Thereafter their basic pay, FDA, special D.A., Attendance bonus and VDA be added together and one increment in the non-executive pay scale be notionally added thereto. From this, the executive D.A. be deducted and their pay in the executive category (E-1 or E-2 as the case may be) be fixed at the same stage or at the next higher stage if there is no equivalent stage. Thereafter one increment be added to their pay in the revised executive pay scale. They would draw this pay in the executive category as on 1-1-1987 or on the date of promotion to the executive category whichever is later. If by doing so the executive starts drawing lower emoluments than what he was drawing prior to revision of executive pay scale, the difference be paid as personal pay to be absorbed against future promotions and revisions of pay scales".

5. In this connection, it will be appropriate to quote here the fitment method prescribed in paragraph No. 3 of the office Memorandum dated the 5th April, 1991 for executives who were on the rolls of CIL and its (subsidiaries as on 31st December, 1986 and continued to be on the roll thereafter. The said paragraph No. 3 runs thus :

"3. Fitment method :

Fitment method would be as follows :

Basic pay in the revised scale would be fixed as under :

Basic pay in the existing scale of pay as on 1-1-1987

plus

First ad hoc relief related to actual basic pay as on 1-1-1987

plus

Industrial D.A. Rs. 838.35 at AICPI-685 as on 1-1-1987

plus

Fitment amount as applicable.

On the aggregate arrived at, pay will be fixed in the revised scale. Where the total does not fit in a stage of the revised scale of pay, the pay will be fixed at the next higher stage."

6. Here it may be of some interest to have a look at paragraph No. 1 of the said office Memorandum which enumerates the existing and revised scales of pay with fitment amounts admissible to different grades of executives under the Fourth Pay Revision. The said paragraph runs thus :

"1. Revision of pay scales :

The revised pay scale would be as under :

Scale	Revised	Scale	Fitment	of Pay (Rs.)	of Pay (Rs.)	Grade Existing	Amount (Rs.)
1030-50-1380-60-	2250-100-4150	400	1800-100-2000	E-2	1130-50-1380-60-	E-1	
2500-120-3100-130-	600	1800-100-2400	3750-140-5150	E-3	1680-60-1800-		
3700-140-4400-	900	100-2700	150-5900	E-4	2200-100-2900	4600-150-5350-	
1000	160-6470	E-5	2400-100-3200	5200-160-6000-	1000	175-6875	E-6
2700-100-3500	5750-175-7325	1200	E-7	2800-100-3600	6000-175-7400	1200	
E-8	3000-100-3700	6250-175-7475	1200	E-9	3500-100-4000	7250-200-8250	
1200							The

revision shall be effective from 1-1-1987."

7. The effect of the office Memorandum dated the 5th April, 1991 and dated the 30th May, 1991 is that there will be different modes of pay fixation in the revised pay scales for executives. One of the modes will be applicable to those who were on the rolls on 31st December, 1986 and there will be a different mode for those who were promoted thereafter although the pay scales may be same for both groups. The latter category of executives who were promoted to the executive category on or after the 1st January, 1987 would be denied the fitment amount in the matter of pay fixation to the revised scale and would be governed by a totally new method of pay fixation different from that prescribed in the office Memorandum dated the 5th April, 1991 as a result of which an executive

promoted from the non-executive category to the executive category on or after the 1st January, 1987 would be losing, on pay fixation according to the office Memorandum dated the 30th May, 1991, an amount varying from Rs. 100/- to Rs. 620/- per month (depending upon the stage of pay scale attained by the concerned incumbent immediately before the promotion) compared to what would have been admissible to him in the event of his pay fixation in accordance with the method prescribed by the office Memorandum dated the 5th April, 1991. The comparative chart prepared for showing the difference in the matter of pay fixation under the said two office Memoranda has been annexed to the writ petition as Annexure-B.

8. In the writ petition the petitioners claimed to represent all those who were promoted from non-executive to executive cadre between the 1st January, 1987 and the 26th July, 1989 i.e., the date immediately preceding the date on which the NCWA IV was promulgated. However, at the time of hearing on technical ground the petitioners gave up their claim to represent all those who were promoted between the 1st January, 1987 and the 26th July, 1989 and confined their claim in respect of their personal and individual capacity as promotee obtaining promotion in between the said dates. It has been submitted by Mr. A. P. Chatterjee on behalf of the petitioners that it was wholly unreasonable and illogical to prescribe a different mode of pay fixation, particularly in respect of those of the promotees who were promoted from the non-executive category to the executive category in between the 1st January, 1987 and the 26th July, 1989, thereby depriving them of the fitment amount in the matter of pay fixation and causing a consequential loss varying from Rs. 100/- to Rs. 620/- per month compared to those who were on the rolls of executives on the 31st December, 1986 and continued to be on roll thereafter. It was argued by Mr. Chatterjee that it was wholly illogical to bring the petitioners down to the NCWA IV scale of pay first from the un-revised scale of pay of executives which the petitioners were already enjoying as promotee executives and then to fix their pay in the revised scale of pay for executives in accordance with the method of pay fixation prescribed under the office Memorandum dated the 30th May, 1991 instead of applying the fitment method prescribed under the office Memorandum dated the 5th April, 1991 thereby causing loss of considerable amount to the concerned promotee executives. It is the contention of the petitioners that after they were promoted from the non-executive category to the executive category they were drawing salary in the pre-revised executive scale on the basis of pay slips issued to them by the competent authority in the pre-revised scale of pay of the executives and nothing was mentioned that on promotion their pay was fixed only provisionally in the pre-revised scale of pay which was the pay scale for executives in force at the relevant time. It is the further contention of the petitioners that in the circumstances it was wholly illogical and illegal to notionally demote the promoted executives to NCWA IV scale of pay of non-executives and thereafter fit them to the revised scale of pay of the executives by adopting an illegal method instead of directly fitting them to the revised scale

of pay of executives from the un-revised scale of pay of executives which they were enjoying for quite a long time after their promotion till the promulgation of the revised scales for executives, thereby causing enormous financial loss to the petitioners in, the matter of pay fixation in the revised scale for executives.

9. In this context, the petitioners also referred to the earlier method of fitment after the promulgation of the NCWA III and the Third Revised Pay Scales. NCWA III, as we have seen, was promulgated in November, 1983, introducing new scales of pay for the non-executives with effect from the 1st January, 1983 and the Third Pay Revision was promulgated on the 28th May, 1984, introducing new pay scales for executives with effect from the 1st August, 1982. But at that time the executives promoted from the non-executive cadre between the 1st August, 1982 and the 31st December, 1982 were first fitted in the pre-revised scale of executives and then fixed at the corresponding stage in the third revised scale of pay which came into effect from 1st August, 1982, though the third revised scales of pay was promulgated in May, 1984. It has been argued on behalf of the petitioners that there is no justification or logic to deviate this time from the method of fixation to the pre-revised scales of executives and then to the revised scaledirectively as was resorted to on the earlier occasion of pay revision. The petitioners, therefore, inter alia, pray for writ in the nature of Mandamus, directing the respondents to fix pay of the petitioners in the manner set-forth in the concerned office Memorandum dated the 5th April, 1991 and for withdrawing or revoking the office Memoranda dated the 30th May, 1991, 11th April, 1991 and 23rd April, 1991.

10. It is the contention of the respondents that the non-executives who were promoted to the executive category on or after the date on which the revised pay scales were brought into force, that is, on or after the 1st January, 1987, have logically to be first placed in the revised non-executive pay scale and then they have to be fitted in the revised executive pay scale and this is done in such a manner that the non-executives promoted to the executive posts do not stand to lose, particularly when the time lag between the date on which the order regarding the revision of pay scales is issued and the date from which the revised pay scales are brought into force is large. It is the further contention of the respondents that the management were aware of the fact that owing to lapse of time and on account of the fact that the revised pay scales both in the case of the executives and non-executives have come into operation retrospectively, some employees as a result of pay fixation might stand to lose and this is the reason that in office Memorandum dated the 30th May, 1991 it has been clearly mentioned that if as a result of pay fixation in the revised scales of pay (E-1 or E-2 as the case may be) in the manner suggested therein an employee promoted to the executive pay scale on or after the 1st January, 1987 starts drawing lower pay than that he was drawing before, the balance may be paid as personal pay to be absorbed in future promotions and revisions of pay scales. In the affidavit-in-opposition affirmed on behalf of the respondents, it is stated in paragraph 4(xvi) that while the non-executive scales of pay were revised from 1st January,

1987, the orders in that respect were issued on 27th July, 1989 and that between the 1st January, 1987 and the 27th July, 1989 and thereafter some non-executives were promoted to executive grades and the pay of those who were promoted between the 1st January, 1987 and 27th July, 1989 could not be initially revised under NCWA IV which was signed on the 27th July, 1989 and they were provisionally given fixation in the pre-revised scale of executives in promoted post as against persons who were promoted after 27th July, 1989. It is, however, denied by the petitioners in the affidavit-in-reply that the fixation of pay on promotion was provisional and it is asserted that pay slips were issued to the promoted executives as per method laid down in the Common Coal Cadre and nothing was mentioned in pay slip to show that the fixation was provisional. Nothing also has been produced by the respondents to show that the fixation of pay of the petitioners or for that matter of the executives promoted from the non-executive cadre between the 1st January, 1987 and the 26th July, 1989 to the pre-revised scale of pay which was the scale of pay in force for executives at the relevant time was made only provisionally. It is stated in paragraph 4(xviii) of the affidavit-in-opposition that the package of benefit given under the NCWA IV was higher than that of NCWA III. In paragraph 4(xix) of the affidavit-in-opposition it is stated that the total pay packet of the highest group in the non-executive cadre promoted to the executive cadre under NCWA, III did not exceed the pre-revised scale of pay of the executives whereas under the NCWA IV with the packages thus given the pay of the same group much exceeded the pay of officers at the minimum in E-1/E-2 grades. It is also the contention of the respondents that while the petitioners or for that matter the executives promoted on or after the 1st January, 1987 got the benefit of the revised pay scale under the NCWA IV for the period from 1-1-1987 till the date of their promotion, no such benefit was available to the executives who were on the rolls on 31st December, 1986 and continued thereafter. It is the further contention of the respondents that to examine and consider the individual cases of anomalies the Coal India Ltd. set-up a committee after discussion with the Coal Mines Officers' Association of India and if the writ petitioners are really aggrieved they can make representation to the said committee so that anomalies, if any, can be corrected for giving necessary relief.

11. Now let us study the matter in its proper perspective. The promotee executives who were promoted to the executive cadre from the non-executive cadre in between the 1st January, 1987 and the 26th July, 1989 (both dates inclusive) were, on promotion, enjoying the same un-revised scale of pay of executives which was also being enjoyed by those executives who were on the rolls of executives on 31st December, 1986 and continued to be on roll thereafter. Let us take a hypothetical case where the two non-executives A and B were enjoying the same pay at the same stage of the pay scale of the non-executives on 30th December, 1986, A being senior to B only by one position although they entered the service on the same date. On 31st December, 1986 A was promoted to E-1 grade of the executive category, but B did not get promotion

on that date for want of vacancy. Suppose the next vacancy occurred thereafter and B was promoted, say on the 14th January, 1987. Both A and B were getting the same pay in the un-revised scale of pay of executives on promotion as the revised scale of pay was not yet promulgated, the difference on point of facts being that A got promotion 15 days earlier than B. Subsequently, after years, revised pay scales were promulgated with retrospective effect from the 1st January, 1987. B would reasonably expect that fixation of his pay in the revised pay scale for executives would be done in the same manner as in the case of A. But the authorities introduced different modes of fixation as a result whereof the pay of B was fixed on the date of his promotion in a manner which has been causing financial loss to him compared to what he would have been entitled to had it been fixed by applying the same principle as applied for fixation in the case of A. The above mentioned hypothetical case only illustrates apparent anomaly of the sequels to the groupings made by the authorities for the purpose of fixation of pay in revised scale.

12. Since both the groups of employees who were on the rolls of executives on the 31st December, 1986 and who were subsequently promoted to the executive category on any date thereafter upto the 26th July, 1989 had been fixed in the same un-revised scale of pay of executives, it could be legitimately expected by all of them that on the introduction of the revised scale of pay of executives promulgated on 5th April, 1991 but made effective from 1st January, 1987 they would be fitted and fixed in the revised scale of pay in the same manner and following the same principle so that there may not be any undue discrimination in the matter amongst them. But what is actually found is that the respondents concerned while provided the same pay scale in the executive cadre for both the groups, yet sought to apply two different methods of fixation of pay in the revised pay scale of executives. This discrimination in the matter of fixation of pay between the executives who were on the rolls on 31st December, 1986 and those who were promoted in between the 1st January, 1987 and the 26th July, 1989 i.e., the date immediately preceding the date on which the revised pay scale for non-executives was promulgated resulted into a loss for the promotes executives who were promoted in between those two dates to an extent varying from Rs. 100/- to Rs. 620/- depending upon the actual pay which the individual incumbent was getting in the un-revised scale of pay of non-executives immediately before promotion.

13. The question is whether this classification of the two groups for the purpose of fixation of pay stands the test of Article 14 of the Constitution of India. The law is now settled that classification permissible under Article 14 must satisfy two conditions, namely, (i) it must be founded on an intelligible differentia which, distinguishes persons or things that are grouped together from others left out of the group, and (ii) the differentia must have a rational relation to the object sought to be achieved by the measure in question. Further the differentia and the object must be different and the object by itself cannot be the basis of classification. However subsequently new dimension was added to the theory of

equality propounded in Article 14. This new dimension has been added by certain judicial pronouncements of the Supreme Court, namely, *E.P. Royappa Vs. State of Tamil Nadu and Another*, *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, In *Hasia's* case (supra) at page 499 the Supreme Court took note of the following observations made in *Maneka Gandhi* (supra) :

"Now...as to...the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this Article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And therefore it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. ..Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence." The Supreme Court in *Hasia's* case (supra) then continued: "This was again reiterated by this court in *International Airport Authority's* case...It must therefore now be taken to be well-settled that what Article 14 strikes at is arbitrariness, because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the court is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action...Article 14 immediately springs into action and strikes down such State action. In fact the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

14. We would now refer to the decision of the Supreme Court in *P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others*, . The Third Pay Commission set-up by the Government of India inter alia made recommendation related to the scales of pay of draughtsmen and senior draughtsmen in the Ordnance Factories under the Ministry of Defence. According to the recommendation draughtsmen were to be in the scale of Rs. 330-560/- while the senior draughtsmen were divided into two groups with two scales of pay Rs. 330-560/- and Rs. 425-700/-. It was this division of senior draughtsmen that was under challenge. Formerly the senior draughtsmen formed one category and were enjoying the same scale of pay but

by the recommendation of the Third Pay Commission the senior draughtsmen were divided into two groups with two different scales of pay. The explanation for that classification of senior draughtsmen who hitherto formed one group enjoying the same scale of pay was that the division was based on seniority. The Supreme Court turned down the classification on the ground that the explanation given for the classification cannot be accepted as sufficient to meet the requirements of law. In that connection, the Supreme Court made the following observations at page-1126 (ibid) :

"That is, for the same work and same functions, the appellants would get less pay than the other group of senior draughtsmen. The explanation is that this division is based on seniority. This can not be accepted as sufficient to meet the requirements of law. By seniority, a senior draughtsman will get higher pay with the increments that he earns proportionate to the number of years he is in service. Here that is not the case. It is classification of the senior draughtsmen into two groups, that is responsible for the higher pay. For this classification, the Government must be able to satisfy the court of certain other tests which are non-existent in this case, since it is not in dispute that senior draughtsmen, belonging to the two divisions, do equal and same work. In view of the total absence of any plea on the side of the respondents that the senior draughtsmen who were placed in the advantageous group, do not (sic) perform work and duties more onerous or different from the work performed by the appellants group, it will have to be held that this grouping violates, Article 14 of the Constitution."

15. This decision would show that when a group of employees was enjoying one and the same pay scale and was also doing the similar or same work, it will be an act of arbitrariness, violating Article 14, to split them into two groups thereby giving unequal benefits of pay to the two groups without being backed by any valid, cogent and good reason for such classification. Here also in our present case when the executives who were on the rolls on 31st December, 1986 and the executives who were promoted from the non-executive cadre to the executive cadre in between the 1st January, 1987 and 26th July, 1989 were enjoying the same un-revised scale of pay of executives and it is not the case that the two groups were not doing works of identical or same nature, any discrimination in the matter of fixation of their pay in the revised scale causing financial loss to one group compared to the other must be branded as arbitrary unless good reason can be shown for such classification.

16. We would now refer to the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), The Central Government ameliorated the pensionary benefits of pensioners, The liberalised pension formula was however made applicable to employees retiring on or after the specified date, namely, the 31st March, 1970. The question was raised whether it was discriminatory to exclude the Government servants who retired before that date from the ameliorated pensionary benefits. The Supreme Court did not approve this

classification made by the Government and made the following observations at page-150 (ibid) :

"That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria, "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogenous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date" in impugned memoranda Exhibits P-1 and P-2, violates Article 14 and is unconstitutional and is struck down."

17. This decision would show that the Supreme Court treated the pensioners as a homogeneous class although different pensioners might have retired on different dates. The Supreme Court also found that the division of the pensioners into separate segments with reference to the dividing line of a particular date for the purpose" of making the liberalised financial benefits available to one segment but depriving the other was not based on any discernible rational principle and was rather arbitrary.

18. In our present case also the executives who were promoted from the non-executive category to the executive category on or before the 31st December, 1986 and those who were promoted on any date thereafter till the 26th July, 1989 belong to the same class. Referring back to the earlier illustration we will find that the incumbent A who was promoted to the executive category from: the non-executive category on the 30th December, 1986 and the incumbent B who was promoted on the 14th January, 1987 were both enjoying the same scale of pay in the non-executive category immediately before the respective dates of their promotion as the revised scale of pay for the non-executive category was not yet promulgated. On promotion both of them were also fitted and fixed, under the same rule of pay fixation, in the same un-revised scale of executives as the revised scale of executives was promulgated much later. In the circumstances, both those incumbents or for that matter both groups of incumbents, namely, those who were promoted before the 31st December, 1986 and those who were promoted thereafter between the 1st January 1987 and the 26th July, 1989 appertained to one homogenous class enjoying the same un-revised scale of executives on their promotion from the same un-revised scale of non-executives. After the promulgation of the revised pay scales for the executives also they were very rightly provided with the same pay scale

irrespective of their dates of promotion, but unfortunately in respect of their fixation of pay separate methods were prescribed for two groups of executives, the grouping being based on the fortuitious choice of a date, marking the retrospective reach of the new pay scales, as a result of which one group of executives has to sustain considerable financial loss compared to the other group. It is needless to mention that the main purpose of pay revision is generally to make upward revision of pay of employees necessitated by a host of reasons, such as, fall in rupee value, the rising cost of maintenance of livelihood, circumstantial demand for larger pay packets for meeting the changing pattern of general life style bringing many hitherto luxury items in the fold of the necessities of life as an inevitable incident of the advancing time of the present day world dominated by science, technology and sophistication. Therefore when a pay revision is made, it is only fair and reasonable that the employees who were similarly circumstanced in material respects before the advent of the pay revision should get the same or similar benefit of the pay revision in the matter of pay fixation so that there may not be any undue discrimination amongst them. Conversely, if any grouping is made out of a homogeneous class, such grouping must be based on intelligible differentia having a rational nexus to the object sought to be achieved but the object by itself cannot be the basis of classification.

19. It is the contention of the respondents in paragraph 4(x) of the affidavit-in-opposition that the management were aware of the fact that owing to lapse of time and on account of the fact that the revised pay scales both in the cases of executives and non-executives have come into operation retrospectively, some employees might stand to lose as a result of pay fixation and that is why it has been clearly mentioned in the Memorandum dated the 30th May, 1991 that as a result of pay fixation in the revised scales of pay in the manner suggested therein if an employee promoted to the executive pay scales starts drawing lower pay than that he was drawing before, the balance may be paid as personal pay to be absorbed in future promotions and revisions of pay scales. This contention plainly cannot be a justification for sustaining the discrimination made in the matter of pay fixation in respect of the two groups resulting into financial loss to one group compared to the other who were otherwise placed in similar circumstances in material respects. When two persons are placed in similar service situations in material respects it is a poor consolation or justification to say that while one will be getting a higher rate of emolument by pay fixation, the other, although getting a lower rate of emolument by application of a different method of pay fixation, would be protected from getting lower than what he was getting earlier. The question is not that he should be protected from getting lower than what he was getting earlier. Rather the question is why he should not get the same rate of increase in his emoluments as has been made admissible to others, although all of them are similarly circumstanced in all material respects. In the present case, I must say, no good explanation is forth-coming to satisfy the question. It is also the gist of the contention of the respondents in paragraph 4(xix) of their affidavit-in-opposition that the total pay packet of the highest

group of non-executives under the NCWA III did not exceed the revised scale of executives but under the NCWA IV total pay packet of the non-executives much exceeded the minimum pay of executives in E-1/E-2 grade (in the un-revised scale). This also in my opinion cannot be a ground at all for discrimination. If the total pay packet of a non-executive under NCWA IV exceeded the minimum of the un-revised pay scale of executives in E-1/E-2 grade, that has no rational nexus to the point in question, because by reason of the pay revision the executives in E-1/E-2 grade also will be entitled to the higher pay scale from the same date on which the NCWA IV came into effect and therefore the executives will not be enjoying lesser pay than the non-executives at any point of time. It is the contention of the respondents that since from the 1st January, 1987 the promotee executives who were promoted in between the 1st January, 1987 and the 26th July, 1989 would be getting the benefit of the revised pay scale under NCWA IV till the date of their promotion their pay would have to be fixed in the revised scale of pay of the executives under the normal rules i.e., the provisions of Common Coal Cadre but considering the hardship involved their position was reviewed by the office Memorandum dated the 30th May, 1991. It is also the contention of the respondents in paragraph 10 of their affidavit-in-opposition that the non-executives promoted to executive category before the 1st January, 1987 did not get the benefit of NCWA IV and hence they got the benefit of fitment amount. This also cannot constitute a valid ground for discrimination in the matter of fixation between those who were promoted on or before the 31st December, 1987 and those who were promoted thereafter. The executives who were promoted between the 1st January, 1987 and the 26th July, 1989 worked in the non-executive category from the 1st January, 1987 till the date of their promotion and therefore naturally they will get the benefit of the revised pay scale of the non-executive category for that period but the executives who were promoted before the 1st January, 1987 were already in the grade of executives on and after 1st January, 1987 enjoying higher scale of pay both in the revised and unrevised scale of pay of executives compared to both the revised and unrevised scales of pay of non-executives and therefore it cannot be a good ground for discrimination that the promotee executives who were promoted earlier to the 1st January, 1987 did not get the benefit of the revised pay scale of the lower grade. If they did not get the benefit of the revised pay scale of lower grade by reason of their being at the higher grade at the relevant time, they obviously got the benefit of the revised pay scale of the higher grade for the relevant period. Therefore it cannot be a good reason to say that simply because the non-executives enjoyed the revised pay scale of non-executives for sometime till their promotion they should be treated differently in the matter of their pay fixation on promotion.

20. The net result is that the respondents made a discrimination in the matter of fixation of pay in the revised scales of pay of executives between the executives who were promoted from the non-executive cadre on or before the 31st December, 1986 and those who were promoted from the non-executive cadre to

the executive cadre between the 1st January, 1987 and the 26th July 1989 although the incumbents of both these groups belonged to a homogeneous class in view of the fact that they were enjoying the same un-revised scale of pay of non-executives immediately before the respective dates of their promotion and were also given, under the same rules of pay fixation, to enjoy the same un-revised scale of pay of executives on the the respective dates of their promotion and thereafter. The discriminatory method of pay fixation is plainly prejudicial to one group compared to the other and the grouping is also not based on any discernible rational principle so far as the question of pay fixation is concerned. Consequently the method of pay fixation provided for the executives promoted from the non-executive category to the executive category in between the 1st January, 1987 and the 26th July, 1989 (both dates inclusive) causing financial loss varying from Rs. 100/- to 620/- per month under the office Memorandum dated the 30th May, 1991 compared to what is admissible to another group of executives promoted on or before the 31st December, 1986 under the method of pay fixation provided in office Memorandum dated the 5th April, 1991 is plainly arbitrary and cannot be sustained. It has been submitted on behalf of the respondents that the office Memorandum dated the 30th May, 1991 provides for setting up of a committee for examining the individual cases of anomalies and the petitioners, if they are aggrieved in respect of their pay fixation, may approach the said committee instead of approaching the court. I find no merit in this plea. If the pay fixation method itself is arbitrary and therefore cannot be sustained there is no question of relegating the aggrieved person to seek relief before the committee because the pay fixation method in respect of a segment of executives itself has to be set aside.

21. It has been argued on behalf of the respondents that this writ petition is not maintainable as no legal right of the petitioners has been infringed. This argument is also not tenable because the pay fixation method applied to them being found to be arbitrary and not sustainable on the anvil of Article 14 of the Constitution and the petitioners being found not liable to be treated in a discriminatory manner in the matter of application of the principle of pay fixation provided in the office Memorandum dated the 5th April, 1991 they certainly have a right to approach this court in its writ jurisdiction for appropriate relief. The writ petition is therefore found to be quite maintainable. Accordingly the respondents are hereby directed by a writ of Mandamus not to apply the impugned office Memoranda dated the 30th May, 1991, 23rd April, 1991 and the 11th April, 1991 (which are Annexures x-4, x-3 and x-2 respectively to the writ petition) to the writ petitioners in the matter of fixation of pay to the revised pay scales of executives and the respondents are further directed to apply the principle of the pay fixation formula contained in paragraph No. 3 ("fitment method") of the office Memorandum dated the 5th April, 1991 which is Annexure x-1 to the writ petition with the benefit of fitment amount in the matter of fixing the pay of the writ petitioners or for that matter, of the executives who were promoted from the non-executive category to the executive category in between the 1st January,

1987 and the 26th July, 1989 (both dates inclusive) in the revised pay scales of executives. The pay of the petitioners shall be fixed accordingly within a period of three months from the date. The respondents will be at liberty to issue separate office Memorandum, supplemental and/or modificatory, in conformity with the above directions if considered necessary for administrative reasons. The writ petition stands allowed accordingly.