

(1997) 03 SHI CK 0017
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 335 of 1987

Panama Chhaivang and Others

APPELLANT

Vs

Director General Security Directorate and Others

RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1998) 1 ShimLC 49

Hon'ble Judges : M. Srinivasan, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Anand Sharma, Trilok Chauhan and Ankush Sood, for the Appellant;
P.A. Sharma, Sr. Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Lokeshwar Singh Panta, J.—This writ petition has been filed primarily for quashing office order No. 1/211/4th Pay/87-13238-55 dated June, 1987 (Annexure PB). issued by the second Respondent whereby revised pay scale of Rs. 950-1499 had been denied to the Petitioners and for directing the Respondents to restore to the Petitioners the said pay scale with effect from the date the same was denied to them. The Petitioners have also prayed that they shall be granted equal pay analogous to their counter-part matriculate constables employed in the Special Service Bureau with further prayer restraining the Respondents from effecting recoveries from their pay in pursuance to the order (Annexure PB).

2. The Petitioners were employed as constables in the Special Service Bureau belonging to the combatant forces. At the time of their recruitment they were non-matriculate. There are several combatant forces such as Central Reserve Police Force, Indo- Tibetan Border Police, Central Industrial Security Forces and Assam Rifles maintained by the ministry of Home Affairs for the security of the country. According to the averments of the Petitioner the Special Service Bureau and the Intelligence Bureau perform the duties and functions of more arduous nature which are more difficult and not comparable with the other forces. Thus

there is a difference of pay scale in each rank of the aforesaid forces i.e. Constables of other forces were drawing pay scale of Rs. 210-270/- (pre-revised) and revised Rs. 825-1200 under the 4th Pay Commission report whereas the Constables of Intelligence Bureau were earlier drawing Rs. 225-308 and the revised pay scale of Rs. 950-1400. Petitioners have stated that at the time of selection, no distinction was made between matriculate and non- matriculate constables and only qualifications are literacy and physical fitness and intelligence of a person to be brought as a constable in the Special Service Bureau and under the Intelligence Bureau of the Ministry of Home Affairs. Under the rd. Drt of the 4th Pay Commission which was accepted by the Central Government, the vided pay scale was granted to the constables at Rs. 950-1400 w.e.f. 1st January, 1986 which was permitted to the Petitioners and all other constables irrespective of the fact whether they were matriculates or non-matriculates vide Office Force Order No. 34 dated 9th December, 1986 which remained in force through out. The copy of the said order has been placed on record as Annexure: PA to this writ petition. The Petitioners have stated that they continued to draw the aforesaid pay scale till June, 1987 but now abruptly vide office order Annexure: PB the aforesaid pay scale has been denied to them without any justification and their pay scale has been brought down to pre-revised scale of Rs. 210-270.

3. Being aggrieved by the aforesaid action on the part of the Respondents the Petitioners have preferred the present writ petition on the grounds that the decision of the Respondents in fixing different pay scales for matriculates and non-matriculates constables is arbitrary and discriminatory and they have been deprived of the revised pay scale by illegally reducing the pre-revised pay scale.

4. The Respondents have filed their joint counter affidavit in the instant case justifying their action. It is stated in the counter affidavit that the duties of the Central Police Organisation such as Central Reserve Police Force. Border Security Force, Indo Tibetan Border Police, Central Industrial Security Force etc. are different to that of Intelligence Bureau and Special Service Bureau. The nature of duties of Special Service Bureau personnel is almost akin to that of the personnel of the Intelligence Bureau. For the purpose of pay scales, the Special Service Bureau personnel are equated to the equivalent ranks of the Intelligence Bureau. It is stated that while implementing the recommendation of the 3rd Pay Commission two separate pay scales were allowed to the personnel of Intelligence Bureau i.e. a scale of Rs. 225-308 to the matriculate constables (Security Assistant) of Intelligence Bureau and a scale of Rs. 210-270 to non-matriculate constables (Security Assistant). The Special Service Bureau constables matriculates and non- matriculates were accordingly paid the above two pay scales vide Cabinet Secretariat letter No. EA/SE-120/70 dated 28th/29th January, 1975 (Annexure-III) and letter No. EA/SE = 120/70 dated 26.7.1975 (Annexure-IV). Similarly, while implementing the recommendations of the 4th Pay Commission following two different scales were allowed in the Intelligence Bureau:

?Pre-revised scale as per 3rd Pay Commission. Revised scale as per 4th pay Commission.

(i) For matriculates. Rs. 225-308 Rs. 950-1400 (Ministry of Fin. Govt. of India notification No. F-15/(i)/IC/86 dated 22nd Sept 86. Para IX (i) 5 referred (Annexure-V)

(ii) For Non- matriculates Rs. 210-270 Rs. 825-1200 (In this regard A.D.I.B. MHA letter No. 12/Estt (C)-86 (1) dated 30-10-86 conveying the sanction of the Govt. for revised pay scale of Rs. 825-15-900-EB-12 00 instead of existing scale of Rs. 210-270 referred (Annexure- VI)

5. As the Constables of the Special Service Bureau are authorised the pay scales allowed to their counterparts in the Intelligence Bureau, the two scales, as sanctioned by the Government for the two categories could only be paid. The 3rd Respondent Union of India has already approved the revised pay scale of Rs. 825-1200 for non-matriculate constables of Intelligence Bureau and the same pay scale was allowed, to non- matriculate constables of the organisation to which the Petitioners were employed. The Respondents have stated and clarified that the Special Service Bureau (SSB) was established in 1963 and at the time of establishing the group centres, the Police Personnel were taken on deputation from various State Governments. The Force was constituted consisting of constables with different educational qualifications i.e. matriculates and non-matriculates. Subsequently, vide office order No. 1/9/73/SSB(F) dated 30.9.1974 (Annexure-X) the Director General of Security Office made an open recruitment of the candidates who were matriculate as constables. However, the relaxation of minimum qualification in respect of candidates belonging to Scheduled Caste/ Scheduled Tribe would continue to be the middle standard. This special consideration was given to Scheduled Caste/Scheduled Tribe candidates as they had to be given proper representation in the force because personnel of these two categories with matriculation qualification were not available and except this relaxation no distinction was made at the time of recruitment. The Government accepted the 4th Pay Commission's recommendations and the pay scales mentioned against the posts of constables in the Intelligence Bureau earlier as Rs. 225-308 only was notified as Rs. 950-1400/-. Based on that order, similar orders were issued by the Government for the Special Service Bureau Directorate. Since no separate scale was mentioned in the Government notification for non-matriculate constables drawing the scale of Rs. 210-270 (pre-revised scale), the Special Service Bureau allowed the scale of Rs. 950-1400/- to the constables of the Organisation under the impression that the common scale of Rs. 950-1400 was applicable to both the categories of matriculate and non-matriculate constables. Since the constables both matriculate and non-matriculate of Special Service Bureau had been given in the past the pay-scales as admissible to their counterparts in Intelligence Bureau and are to be given equi scale in future also. the Special Service Bureau moved the Central Government for the grant of scale of Rs. 825-1200 to the non-matriculate

constables Group Centres and Government notification authorising the revised scale of Rs. 825-1200 to non-matriculate constables earlier drawing pre-revised pay scale at Rs. 210-270, issued order dated 2.9.1987 (Annexure XI) It is stated that the Petitioners have been given their legitimate revised pay-scales and there is no justification for demanding higher pay scale of Rs. 950-1400 by them for which they are not entitled.

6. The Respondents have stated that the recommendations of the 3rd Pay Commission which became effective from 1.1.1973 made a distinction and the constables (Security Ass in the Intelligence Bureau) were given two scales of pay i.e. 225-308 for the matriculate constables and Rs. 210-270 for non-matriculate constables. This was implemented in the Intelligence Bureau and Director General (s) and was accepted by the constables of intelligence Bureau and DG (s) of which Special Service Bureau is one part of the Organisation and no one had raised any issue of distinction of pay-scale at that stage. Now it is obvious that distinction would be made in the implementation of the scales in pursuance to the 4th pay commission with effect from 1.1.1986. On the basis of the 4th Pay Commission Report which was accepted by the Central Government. matriculate constables who were drawing the pay scale of Rs. 225-308 had been sanctioned pay code of Rs. 950-1400 w.e.f. 1.1.1986 and therefore, it was essential that non-(sic) constables who were drawing the pre-revised scale of Rs. 210-270 (sic) revised scale of Rs. 825-1200. The pay-scales have been given to the constables of Intelligence Bureau and to the Special Service Bureau constables, It is clarified in the affidavit that in the Special Service Bureau Centre constables were appointed/Absorbed in the following categories:

(i) Matriculate Constable for general duty.

(ii) Matriculate Constables for Orderly duties.

(iii) Non-matriculate Constables for both general and orderly duties.

7. The constables in the category at (i) above are being given the pay scale of Rs. 950-1400 w.e.f. 1.1.1986 which is equivalent to Rs. 225-308 (pre-revised scale) whereas the constables falling in categories (ii) and (iii) above are being authorised the scale of Rs. 825-1200 w.e.f. 1.1.1986 which is equivalent to Rs. 210-270 (pre-revised scale) applicable w.e.f. 1.1.1973 and was based on the recommendations of the 3rd Pay Commission Report. The categories of two pay scales are also applicable to the constables of Intelligence Bureau for matriculates and non-matriculates Security Assistants/Constables and on the same analogy the pay-scales in Special Service Bureau have been adopted for matriculate Field Assistants/Constables and non-matriculate Field Assistants/Constables.

8. Mr. Ankush Sood, learned Counsel appearing for the Petitioners submitted that the Central Government having once accepted the 4th Pay Commission's report and having once granted the pay-scale of Rs. 950-1400/- to the constables of Special Service Bureau could not withdraw the said scale abruptly and reduce

them to less than 1/3rd of the pay-scale available to their counterparts in the Organisation. He urged that non-matriculate and matriculate constables have to perform the same duties and same functions and no distinction could be made out with respect to their qualifications between them. The criteria of granting different pay-scales to the matriculate and non-matriculate constables in the Special Service Bureau by the Respondents according to him is violative of Articles 14 and 16 of the Constitution of India. The learned Counsel in support of his submission relied upon the judgment of Division Bench of Jammu and Kashmir High Court in Triloki Nath Khosa and Ors. v. The State of Jammu and Kashmir and Anr. 1973 (1) S.L.R. 64. We have perused the judgment of the Division Bench of Jammu and Kashmir high Court and noticed that the ratio of the said decision is not applicable in the present case. In that case the question posed before the learned Judges was about the constitutional validity of Rule 3(f) of Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1970 superseding the earlier Service Rules, 1939. Under the 1939 Rules for purposes of promotion Diploma holder Assistant Engineers and Degree holder Assistant Engineers constituted one single category and the rule of promotion generally applicable to them being merit, ability and previous record. These Assistant Engineers were eligible for promotion to the next category of Executive Engineers. The old Rules were superseded by Recruitment Rules, 1970 and in new Rules a provision was made that promotion to the category of Executive Engineers will be made from amongst the Assistant Engineers possessing degree in Engineering or AMIE and thus, excluded the Diploma holder Assistant Engineers from promotion. Learned Judges held that the retrospective operation of 1970 Rules in so far as they impose the qualification bar for promotion debarring Diploma holder Assistant Engineers, is violative of Articles 14 and 16 of the Constitution of India. This judgment has got no bearing in the facts of the case in hand.

9. The issue, therefore, which arises for our consideration is as to whether the Petitioners are being discriminated in parity of pay scale on the basis of their educational qualifications with their counter-parts who are matriculate in the same organisation. We have considered the material placed on record. Letter No. EA/SC/120/70 Government of India Cabinet Secretariat Department of Cabinet Affairs dated 28/29th January, 1975 (Annexure III) issued by the Deputy Secretary(s) to the Director SSB Directorate deals with the method of fixation of pay in the revised scale of post of the personnel of SSB, Battalions/Coys. In that letter categories of posts and their pay-scales are mentioned in SSB Battalions/Companies. Constables were recorded in the initial pay scale of Rs. 85-110 and placed in revised scale of Rs. 225-308 (non-matriculate as also matriculate constables if any who are employed purely on Orderly duties will be allowed only the scale of Rs. 210-270 without any special pay as is the position in other Police forces). In a copy of amendment No. EA/SE-120/70 dated 26-7-1975 issued by the Cabinet Secretariat (Department of Cabinet Affairs), New Delhi (Annexure-IV) following revised scales were substituted in place of existing revised scales

for constables shown in letter dated 28/29th January, 1975 (Annexure-III):

(i) Rs. 225-308

For Matriculates employed other than on purely orderly duties.

(ii) Rs. 210-270

For Non-Matriculates.

(iii) Rs. 210-270

For constable employed on Purely orderly duties.

10. Constables on purely orderly duties will not be allowed special pay according to the said letter. A reading of these two letters shows that the Petitioners who are admittedly non-matriculates were appointed in the pay scale of Rs. 85-110 and were employed purely on orderly duties. The pay scale was revised to Rs. 210-270 on the basis of the 3rd Pay Commission Report. The constables in SSB are equated with their counter-part in Intelligence Bureau with uniform pay scales. A reading of Annexure-IV would go to show that even matriculate constables who were employed on purely orderly duties were entitled to pay scale of Rs. 210-270 and their pay scale is at par with non-matriculate constables. This letter is clear that only those matriculate constables who were employed other than on purely orderly duties were entitled to get pay scale of Rs. 225-308. The Petitioners were directly recruited to the SSB Organisation in the year 1974-75 and before that the Police personnel were taken on deputation from various State Governments from 1963 when Special Service Bureau Battalion was established. At the time of the recruitment of the Petitioners they were given relaxation in educational qualification as Middle pass with special consideration that Scheduled castes and Scheduled Tribes candidates had to be given appropriate representation in the force because in these two categories matriculate candidates were not available and except that exception no distinction was made in favour of the Petitioners.

11. A letter No. 24/1/79-SSB/E. II dated 29th January 1980 (Annexure-I) was issued by Assistant Director to the Senior Administrative Officer (E) ITBP and Ors. requesting the latter to let him know the present position about the pay scales of constables special pay for Head Constables and special pay/Compensatory allowance of Deputy S.P. in I.T.B.P. in reply to this letter Assistant Director of Intelligence Bureau sent a Memorandum dated 25th February, 1980 (Annexure II) intimating the Assistant Director of Special Service Bureau that in their Organisation also two different pay scales of constables/Security Assistants were applicable i.e. one for the matriculate and the other for non-matriculate and the scales were the same i.e. for matriculates Rs. 225-308 and for non-matriculates Rs. 210-270. The recommendation of the 3rd Pay Commission which became effective w.e.f. 1.1.1973 clearly made a distinction between the pay scales of matriculate and non-matriculate constables and the report of the Commission was implemented in the Intelligence Bureau and was accepted by

the constables of Intelligence Bureau of which Special Service Bureau was a part of the Organisation. It is clear that no personnel had raised any issue about the distinction in the parity of the pay scale at that stage. In implementing the 4th Pay Commission Report a mistake had crept in the Ministry, of Finance Notification dated 22nd September, 1986 (Annexure-V) in which all the constables drawing pay scale of Rs. 225-308 were given revised pay scale of Rs. 950-1400 in the Intelligence Bureau without making any distinction of matriculate and non-matriculate personnel. This mistake was rectified by Assistant Director, Intelligence Bureau by letter dated 30.10.1986 (Annexure IV), stating therein that the Ministry of Finance Department, conveyed that on the basis of the implementation of the recommendations of the 4th Central Pay Commission Report, Non-matriculate Security Assistants in existing scale of Rs. 210-270 may be allowed the revised scale of Rs. 825-1200. The Deputy Director (E) Directorate General of Security, office of the Director: SSB dated 3.2.1987 (Annexure VIII) sent a letter to Director (SR) Cabinet Secretariat requesting the latter that the categories of employees in the Security Organisation under the Cabinet Secretariat Groups "D, "C" and "B" were not covered in the Cabinet Secretariat Order No. 1/48/86-EA-I dated 2.1.1987 and on the basis of the recommendations of the 4th Central Pay Commission suitable modifications may please be made in the Cabinet Secretariat's order to cover these categories also. It also finds mention therein that the aforesaid sanction did not cover constables (non matriculates) and also other constables employed on purely orderly duties in the S.S.B. Group Centres, who were working in the pay scale of Rs. 210-270 (pre revised). The letter also finds mention that in the Special Service Bureau, the pay scales of group centre Non-Gazetted personnel are at par with the scales obtainable in the Intelligence Bureau and this aspect may kindly be kept in view while issuing the Government order. Addendum dated 1.9.1987 (Annexure IX) was issued by the Director (SR) on the subject of implementation of the 4th Central pay Commission in the Security Organisation under the Cabinet Secretariat Groups "D", "C" and "B". In that Addendum, it was mentioned that in ... Annexure-I of the Secretariate Order No. 1/48/86-EA-I dated 23rd October, 1986 the following may be added as serial No. 6 in Part-B posts in Group Centres, SSB:

Non-matriculate Constable in the pay scale of Rs. 210-270 with special pay Rs. 825-15-900 EB-20-1200 No special pay will be in the revised pay scale.

12. The Deputy Director(E), directorate General of Security, office of the Director, SSB issued a Memorandum dated 9.9.1987 the copies of which were distributed to all the concerned Divisional Organisers enclosing therewith the copy of the Cabinet Secretariat order (Annexure IX) wherein the pay scales for the non-matriculate constables of Group Centre were approved by the Cabinet Secretariat on the basis of the revised pay scale of the SSB recommended by the 4th Pay Commission. On the basis of Memorandum dated 1.9.1987, the Deputy Director, Directorate General of Security S.S.B. dated 2.9.1987 sent a DO. letter (Annexure-XI) to the Divisional Organiser Punjab and Himachal Pradesh Division,

Shimla and copy to the Commandant, G.C. Dharampur for dealing with the case on priority basis stating therein that the Cabinet Secretariat has since issued orders for revised pay scale of non-matriculate constables vide Addendum dated 1.9.1987 (Annexure-IX) and requested them that the pay of non-matriculate constables may be fixed in the pay scale of Rs. 825-1200 And their pay and allowances in the revised pay scales be drawn and paid to them immediately. On a reading of the aforesaid letters/orders/Memorandum and Addendum, it is clear that the Petitioners were drawing pay scale of Rs. 210-270 pre-revised and they were entitled to receive revised pay scale of Rs. 825-1200 being non-matriculate constables. Similarly, all constables who were matriculates or non-matriculates employed on purely orderly duties were entitled to get Rs. 210-270 (pre-revised) and Rs. 825-1200 (revised) pay scales. The scale of Rs. 225-308 was only permissible to matriculate constables employed other than on purely orderly duties and they were given the revised pay scale of Rs. 950-1400. The Petitioners cannot be allowed to derive benefit of the bonafide mistake on the part of the Respondents allowing them a revised pay scale of Rs. 950-1400 for which they were not validly and legally entitled to. The mistake was later on rectified when it came to light.

13. The Supreme Court in *State of U.P. and Ors. v. Shri J.P. Chaurasia and Ors.* (1988 (5) SLR 638) had ...sic... dealt with the doctrine of equal pay for equal work. In that case, the Bench Secretaries of the Allahabad High Court challenged two pay scales in the same cadre between them and the Section Officers, praying that different pay scales in the same cadre were in violation of the provisions of Articles 14 and 16 of the Constitution of India. In paragraph-18 of the report, the apex Court observed as under.

...The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

14. Applying the principle laid down in the aforesaid judgment in the present case, the revised pay scale of non-matriculate constables were allowed to them on the basis of the acceptance of the 4th Pay Commission Report and the action of the Respondents cannot be held invalid or illegal. The contention of the learned Counsel is not sustainable and deserves to be rejected. The learned Counsel for the Petitioners placed reliance in *Sahib Ram Vs. State of Haryana and Others*, and urged that the revised pay scale of Rs. 950-1400 was allowed to the Petitioners without their misrepresentation and in such circumstances, the recovery of the payment already made shall not be effected from them. We have given our best consideration to the submissions and do not find any substance therein. As already mentioned in the earlier part of this judgment the Petitioners were never placed in the pay scale of Rs. 225-308 (pre-revised) and Rs.

950-1400 (revised) and they can not claim revised pay scale of Rs. 950-1400. As a matter of fact they were in the pay scale of Rs. 210-270 (pre-revised) which was revised to Rs. 825-1200 on the acceptance of 4th Pay Commission Report. In Divisional Superintendent, Eastern Railway Dinapur and Ors. (1974) 11 SCWR 264 the facts of the case before the Supreme Court were that the employees Respondents therein were fixed in the pay scale of Rs. 110 to 180 and confirmed in the same pay scale. In the facts and circumstances of that case. the apex Court said that since the Respondents on confirmation became entitled to the rights to the post and to the scale of pay fixed, the Appellants herein could not reduce the scale without giving an opportunity to the Respondents to be heard.

15. In Sahib Ram Vs. State of Haryana and Others, the Appellant therein was given up-graded pay scale due to wrong construction of relevant order by the authority concerned without any mis-representation by the employee and in such circumstances, recovery of the payment already made was restrained. The order of restraining the recovery in that case was passed by the apex Court in the facts and circumstances of that case and the ratio of that decision is not applicable in the facts of the present case. Therefore, this contention of the learned Counsel is also not sustainable.

16. No other point has been urged on behalf of the parties.

17. On consideration of the facts and circumstances stated herein before and for the reasons aforesaid, the writ petition suffers dismissal. Order accordingly. There will be no order as to costs.