

(2009) 01 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10584/CAT of 2001

Roshan Lal

APPELLANT

Vs

Central Administrative Tribunal, Chandigarh Bench and
Others

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

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

Citation : (2009) 2 ILR (P&H) 493 : (2009) 4 SLR 310

Hon'ble Judges : M.M. Kumar, J; Jitendra Chauhan, J

Bench : Division Bench

Advocate : I.D. Singla, for the Appellant; Renu Bala Sharma, Central Govt.
Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution challenges order dated 20th July. 2000 (P-9) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for brevity, "the Tribunal") dismissing the Original Application No. 824/CH/98 filed by the Petitioner, who have been working as Head Clerk, as having been rendered infructuous. A further prayer has been made for directing the Respondent to remove the anomaly created in the pay scales of the post of the Head Clerk and District Savings Officers by granting the Petitioner pay scale and pay equivalent to his subordinates who have throughout been junior to him as Upper Division Clerks/Stenos, and who have been promoted as District Savings Officers without competition, written test or interview in the higher pay scale than the Petitioner.

2. Brief facts of the case necessary for disposal of the instant petition are that the Petitioner has been working as Head Clerk in the office of the Regional Director, National Savings (Government of India), Haryana, Chandigarh since 28th January, 1984 and confirmed as such with effect from 29th January, 1986. Prior to 1st January, 1973, the pay scale of the post of Head Clerk was Rs.

210-10-290-EB-15-320-EB-15-380 and that of District Savings Officer was Rs. 180-10-290-EB-I 5-380. It is claimed that the nature of duties and responsibility of a Head Clerk are higher than that of a District Savings Officer. In that regard reliance has been placed on a letter dated 13th November, 1986 (P-1) issued by the Deputy National Saving Commissioner (T) prescribing the job chart for Head Clerks, Upper Division Clerks and Lower Division Clerks and another list of duties and functions of District Savings Officer (P-2). However, with effect from 1st January, 1973 the pay scales of both the posts were brought at par in the pay scale of Rs. 425- 15-500-EB-15-560-20-700. It has been submitted by the Petitioner that prior to 1st January, 1986, both the cadres of Head Clerk and District Saving Officer were feeder cadre for further promotion to the post of Assistant Regional Director National Saving. However, with effect from 1st January, 1986 a joint seniority list of both the cadres has been maintained on all India basis but the next channel of promotion remained the same. A copy of the all India eligibility list of District Savings Officers/head Clerks as on 1st January, 1998 has been placed on record (P-3). The promotional post of Assistant Regional Director has been upgraded to that of Deputy Regional Director, therefore, now the next channel of promotion is to the post of Deputy Regional Director.

3. As per the recommendations of the 4th Pay Commission, the pay scale of the post of District Savings Officer was revised to Rs. 1400-40-1600-50-2300-EB-60-2600 and the pay scale of the post of Head Clerk was revised to Rs. 1400-40-1800-EB-50-2300 with effect from 1st January, 1986, meaning thereby the pay scale of the post of District Saving Officer has become higher than that of the post of Head Clerk with effect from 1st January, 1986.

4. In 1989, the recruitment rules concerning appointment to the post of District Savings Officer were amended and Upper Division Clerks/Stenographers, who were working in lower grade (Rs. 330-560 prior to 1st January, 1986 and revised to Rs. 1200-2040 with effect from 1st January, 1986) than the post of Head Clerk, were made eligible for promotion to the post of District Savings Officer.

5. Feeling aggrieved, the Petitioner made a representation on 1st March, 1989 (P-5) for removing the anomaly in the revision of pay scales of the cadres of Head Clerk and District Savings Officer and for making appropriate provision in the recruitment rules for providing a channel of promotion for the post of Head Clerk to that of District Savings Officer. Subsequently, reminders dated 23rd March, 1989, 21st April, 1989 and 16th May, 1989 were also sent by him. The representation of the Petitioner was rejected by the department,--vide order dated 14th June, 1989 (P-6), relevant portion of which reads thus:

2. The Dy. National Savings Commissioner, Nagpur,--vide his letter No. 15147/PF/II-7/6 dated 24th May, 1989 has clarified that the pay scale of DSO/HC was same till the 4th Commission report came into effect (i.e. Rs. 425--700). with effect from 1st January, 1986 the pay scale became as under:

D.S.O.: 1400--2600 H.C.: 1400--2300 Prior to 1st January, 1986 both the HC/ DSO were eligible for promotion as ARD. Even though the pay scale are different with effect from 1st January, 1986 the Head Clerks have been given their due seniority in the All India Eligibility List from the date they have been appointed as H. Cs to be eligible for promotion as Dy. Regional Director. Hence the question of their promotion as D.S.O. does not arise. It is true that the UD Cs/Stenos now promoted will be having a pay scale of Rs. 1400--2600 whereas H. Cs will be having Rs. 1400--2300. But the H. Cs will not be losing their seniority for this reason, as the newly promoted UD Cs/ Stenos as DS Os will all be ranking junior to all the H Cs already in position. In view of this there is no ground to change the grade of H.C. whatsoever, nor the request to promote H. Cs as D.S. Os is tenable as H. Cs are now straightway eligible for promotion as Dy. Regional Director.

6. The aforementioned order was challenged by the Petitioner before the Tribunal by filing O.A. No. 689/CH/89. The Tribunal directed the Respondents to refer the controversy to the 5th Pay Commission,-- vide its order dated 30th January, 1996 (P-7).

7. The matter was accordingly referred to the 5th Pay Commission, as is evident from the perusal of letter dated 8th March, 1996 whereby the Respondent department has requested the Member Secretary of the 5th Pay Commission to communicate the decision at the earliest (P-8).

8. The recommendations of the 5th Pay Commission were published in the month of September, 1997. It is claimed that nothing has been mentioned by the Commission about the directions issued by the Tribunal vide its order 30th January, 1996 and in para 66.75 of the report following recommendations were made:

66.75 Ministerial posts.--Higher pay scale has been demanded for isolated posts of Accountant, Statistical Assistant, Junior Hindi Translator, Head Clerk and Superintendent. Since all these posts are common category posts, our recommendations about them in the relevant chapters shall apply. The post of Head Clerk in the pay scale of Rs. 1350--2200 may be redesignated as Assistant in the pay scale of Rs. 1600-- 2660. The pay scale of Superintendent (Rs. 2000--3200) may be revised to Rs. 2000--3500 under rationalization of pay scales recommended by us and be re-designated as Administrative Officer, Grade-III.

9. The Petitioner has claimed that instead of resolving the anomalies, the report of the 5th Pay Commission further complicated the issue by revising the pay scales with effect from 1st January, 1996, whereby the pay scale of Head Clerk has been revised from Rs. 1400-- 2300 to Rs. 5000-150-8000 and that of District Savings Officer has been revised from Rs. 1400--2600 to Rs. 5500-175-9000.

10. The Petitioner again approached the Tribunal by filing O.A. No. 824/CH/98. The Respondents contested the claim of the Petitioner. On 9th April, 1999 (P-10),

the respondents filed a rejoinder to the replication filed by the Petitioner before the Tribunal taking the stand that as per the Recruitment Rules, notified in the Gazette of India on 30th December, 1978, the post of Head Clerk is filled by promotion amongst the eligible Upper Division Clerks/Stenographers (Junior) and no qualification is prescribed for the post of Head Clerk, whereas for the post of District Savings Officer the essential qualification prescribed is a degree of a recognised university and desirable qualification is two years experience in Public Relations Work, Public speaking and Salesmanship. It was further contended that 90% posts of District Savings Officer are filled by direct recruitment and 10% by promotion from amongst the Upper Division Clerks and Stenographers (Junior) with 5 years service in the grade and selection through a departmental competitive examination. The Recruitment Rules were further amended on 4th January, 1989 and 80% posts of District Savings Officer were to be filled up by direct recruitment and 20% by promotion. The Respondents have also referred to the recommendations of the 5th Pay Commission made in para 66.71 of the report, which reads thus:

5TH PAY COMMISSION'S RECOMMENDATIONS OF PARA 66.71

District Savings Officer.--The pay scale of District Savings Officers is Rs. 1400--2600, although they are recruited through a common examination held by the Staff Selection Commission for Inspectors of Income Tax, Central Excise etc. Moreover, the status of their counterparts in the State Government is also higher. A demand has been made for elevation of their status to a Group "B" Gazetted post and re-designation as Assistant Regional Director. Department of Economic Affairs have supported their demand for a higher pay scale without parity with Inspectors of Central Excise and Customs, who are having executive responsibilities at present, there are two categories of District Savings Officers, one in the scale of 1400--2600 and the other in that of 1640--2900. We recommend that there should be only one scale for District Savings Officer viz. Rs. 1640--2900. The important role that is required to be played by District Savings Officers justifies such upgradation.

11. The Respondents also referred to para 66.75 of the recommendation made by the 5th Pay Commission, which has already been extracted in para 8 above, and submitted that the grievance of the Petitioner has been redressed because higher pay scale of Rs. 1600--2660 instead of Rs. 1400--2600 demanded by the Petitioner in the earlier O.A. No. 689/CH/1989 has been granted. It was further asserted by the Respondents in their rejoinder that higher pay scale of Rs. 1640--2900 for the post of District Savings Officer has been granted by the 5th Pay Commission in view of their status, selection procedures and important role required to be played by them. It was also contended that the Upper Division Clerks and Stenographer (Junior) are appointed through selection as District Savings Officer against departmental quota as per the Recruitment Rules and they have limited chances of promotion to the next isolated post of Head Clerk in the department. It was further pointed out that in para 66.72 of the

recommendations, the 5th Pay Commission also suggested 25% departmental quota for UD Cs/ Stenographer(s) for promotion to the post of District Savings Officer.

12. The Tribunal dismissed the OA filed by the Petitioner as having been rendered infructuous,--vide order 20th July, 2000 (P-9), by considering the averments made in the rejoinder dated 9th April, 1999 filed by the Respondents, which is subject matter of challenge in the instant petition. The Petitioner also filed a review application before the Tribunal, which was dismissed on 14th September, 2000 (P-13).

13. In the counter filed on behalf of the Respondents similar stand that was taken before the Tribunal in the rejoinder dated 9th April, 1999 and already narrated in paras 10 and 11 above, has been taken. Therefore, we are not referring to those averments once again.

14. When the matter came up for consideration on 26th February, 2008, it was observed by the Division Bench that despite disparity in the pay scales of the District Savings Officers and Head Clerks, why common seniority list with effect from 1st January, 1986 has been maintained. No specific reply to that effect has been given in the counter filed by the Respondents. Therefore, it necessitated filing of additional affidavit to explain the reason for maintaining joint seniority list despite the fact that pay scale of both the posts are different and under the rules known as "National Savings Organisation (Group "C and Group "D" Posts) Recruitment Rules, 1978, these are different cadres and the Respondents have also claimed that their duties are different.

15. Accordingly, additional affidavit of Shri Rajiv Sagar, Regional Director, National Savings Institute was filed on 21st April, 2008. A perusal of the affidavit shows that the query made by the Division Bench in its order dated 26th February, 2008 has not been satisfactorily answered and only factual position which has already been highlighted either in the writ petition or in the counter filed by the Respondents has been reiterated.

16. The sole question which arises for determination in the instant petition is whether in the facts and circumstances of the case, the cadre of Head Clerk could be ignored for promotion to the post of District Savings Officer as the later post carries higher pay scale than that of Head Clerk.

17. The aforementioned claim of the Petitioner assumes further significance in view of the fact that Upper Division Clerks/Stenographers have been made eligible for promotion to the post of District Savings Officer and a separate quota of 20% has been set apart for them. As per the amendment carried on 4th January, 1989, it has also come "on record that for promotion to the post of Head Clerk from the cadre of Upper Division Clerk/Stenographer, no educational qualification/ experience has been prescribed whereas for promotion to the post of District Savings Officer from the post of Upper Division Clerk/" Stenographer, a degree of a recognised University has been prescribed as an essential

qualification and under the desirable qualification, experience of two years in public relation work, public speaking and salesmanship has been prescribed. It has also been established as a fact that District Savings Officers and Head Clerks have been clubbed together in one seniority list for the purposes of promotion to the post of Deputy Regional Director which has been upgraded. As a consequence, the District Savings Officers as well as the Head Clerks become eligible for promotion to the post of Deputy Regional Director. It has also become evident that only those Upper Division Clerks/Stenographers who have a degree qualification, which is essential under the rules, are to be considered for promotion for the post of District Savings Officer. A desirable qualification has also been prescribed i.e. two years experience in public relation, public speaking and salesmanship. It has also remained undisputed that the cadres of Head Clerk and District Savings Officer are distinct cadre as per the 1978 Rules, Although, for the purposes of eligibility, a joint seniority for further promotion to the post of Deputy Regional Director has been maintained, the duties of both the posts are distinct and, therefore, it does not lie within the purview of the Courts to reach a conclusion that same pay-scales are liable to be given merely because incumbents of both the cadres have been clubbed together in a joint seniority based on continuous length of service. The two streams have met yet they perform different functions. It is well settled by a catena of judgments of Hon''ble the Supreme Court that it is not within the domain of the Courts to compare the duties of different cadres and then conclude that their duties are equal and they deserve to be paid the equal pay. In that regard reliance may be placed on the judgments of Hon''ble the Supreme Court in the cases of State of U.P. and Others Vs. J.P. Chaurasia and Others, Khetriya Kisan Gramin Bank v. D.B. Sharma (2001)1 S.C.C. 353 Union of India v. Arun Jyoti 2007 7 S.C.C. 472 and Union of India v. Mahajabeen Akhtar (2001)1 S.C.C. 368.

18. We are further of the view that there is no violation of the equality clause enshrined in Article 14 of the Constitution merely because Upper Division Clerks/Stenographers have been made eligible for promotion to the post of District Savings Officer on the basis of educational qualification and experience. For promotion to the post of Head Clerk from that of Upper Division Clerk/Stenographer, no qualification is prescribed whereas for promotion to the post of District Savings Officer from that of Upper Division Clerk/Stenographer, educational qualification of being graduate from recognized University with preference who have experience of two years in public relation, public speaking and salesmanship, are to be considered. The educational qualification has always been considered as a rational criteria for promotion and grant of higher pay-scale. The question came up for consideration before a Constitution Bench of Hon''ble the Supreme Court in the case of State of Mysore v. P. Narasingha Rao AIR 1969 S.C. 349. It was held that qualification of two grades of tracers who constituted one cadre on the basis of their educational qualification, did not violate Articles 14 and 16 of the Constitution. In that case, two grades of tracers were laid down, one for matriculate tracers with a higher pay-scale and the other

for non-matriculate tracers with lower pay-scale. The aforementioned principles laid down by the Constitution Bench have been repeatedly followed and applied by Hon'ble the Supreme Court in the later judgments which include T.R. Kothandaraman and Others Vs. Tamil Nadu Water Supply and Drainage BD and Others, and State of Haryana and Another Vs. Partap Singh and Others, . Therefore, it cannot be concluded that those Upper Division Clerks/ Stenographers, who have been promoted to the cadre of Head Clerk without any qualification, should also be made eligible for promotion to the post of District Savings Officer like those who fulfil educational qualification and experience. The claim made by the Petitioner on that basis is not sustainable and the same is hereby repelled.

19. Before parting, we wish to point out that the approach adopted by the Tribunal while disposing of the original application, cannot be commended. The Tribunal was required to pass a speaking order instead of disposing of the original application by three lines order, which reads thus:

Counsel for the parties have been heard. In view of the reply, to the rejoinder, dated 9th April, 1999 filed by the Respondents, this O.A. has been rendered infructuous and is disposed of as such. It will, however, be open to the applicant to seek any other relief, if permissible, under the rules. O.A. stands disposed of.

20. The aforementioned order reveals complete non-application of mind and the tendency of the Tribunal to dispose of cases hurriedly. We cannot approve the aforementioned manner of disposing of cases by the Tribunal. Had there been a speaking order determining the rights of the parties then probably the matter would not have lingered for such a long time and could have been disposed of even at the motion stage.

21. For the reasons aforementioned, the writ petition fails and the same is dismissed.