

(2002) 08 DEL CK 0220
In the Delhi High Court
Case No : CWP 3757 of 1997

R.P. Panwar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 08 DEL CK 0220

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Rekha Palli, for the Appellant; Manindar Acharya, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—"Whether the employees who are at par all along except for a brief period would be entitled to the same scale of pay" is the question involved in this writ petition.

2. The basic fact of the matter is not in dispute. The petitioner was working as Stenographer Grade III in the Directorate of Revenue Intelligence ("DRI" for short). He was promoted as Examiner of Customs (OG) on or about 18th January 1978 in the DRI. Examiners of Customs/Preventive Officers, Inspectors of Central Excise working in the DRI had been getting the same scale of pay of Rs. 425 - 800. They were re-designated as Intelligence Officers. The petitioner was also re-designated as Intelligence Officer. The respondents, however, while revised the scale of pay of Inspectors of Central Excise from Rs. 425-800 to 500-900 w.e.f. 1st January 1980, the scale of pay of Examiner of Customs (OG) had not been so revised. According to the writ petitioner, he had been asked to exercise an option as to whether he would like his pay to be re-fixed in the revised scale by letter dated 17th September 1987 to which he had agreed. However, the Inspector of Central Excise, Examiners of Customs and Preventive Officers who had been working on deputation on transfer were paid their arrears, the persons similarly situated like the petitioner herein had been denied the said benefit.

3. It is not in dispute that the representation of the petitioner for being placed in the same scale of pay as that of the Inspectors of Central Excise had strongly been recommended by the second respondent herein.

4. However, by reason of orders dated 11th May 1990 and 12th July 1989, the request of the petitioner for revision of his pay from Rs. 425-800 to Rs. 500-900 was denied. Questioning the said orders, the petitioner filed an Original Application before the Central Administrative Tribunal, Principal Bench.

5. The contention of the respondent had been that there had been two grades namely Examiner/Preventive officers and Inspectors of Central Excise (Selection Grade and Ordinary Grade). 90% of the posts were to be filled up by deputation and 10% by transfer. It has been admitted that the posts were re-designated as Intelligence Officers (Selection Grade) and the Intelligence Officer (Ordinary Grade) by order dated 25th May 1979. However, according to the respondents, such re-designation was subject to the condition that the same would not entitle the holders of the posts to any scheme for higher scale of pay at a later stage and the posts in the scale of Rs. 550-900 and 425-900 continued to be non-gazetted. As the petitioner was denied of the same scale of pay he filed an original application before the learned Tribunal.

6. The learned Tribunal dismissed the said Original Application filed by the petitioner principally on the ground that it is not the job of the court or the Tribunal to fix a scale of pay. It was held:

"In the present case, it is seen that the method of recruitment of Intelligence Officers (DRI) is different from the method of recruitment of Inspectors of Central Excise / Preventive Officers / Examiners on deputation to DRI, which is one of the criteria to be examined to ensure that they are identical before the plea of "equal pay for equal work" can be acceded to. The Inspectors of Central Excise / Preventive officers / Examiners, were granted higher grade of 550 - 900 and such of those Inspectors of Central Excise / Preventive Officers / Examiners who were on deputation (as Intelligence Officers) with DRI, were allowed their higher grade pay of the parent cadre, although the posts of Intelligence Officers in the DRI remained in the grade of 425 - 800. We do not agree with the contention of the learned counsel for the applicant that this was an anomalous position. As they were on deputation, they are entitled to get the grade pay of their parent department, as this had been upgraded. IN any case, the applicant, who belong to DRI's own cadre, cannot claim higher grade as is applicable to the are redesignated as Intelligence Officers does not entitle them to get the higher pay scale as applicable to the other officers who come on deputation."

7. Ms. Rekha Palli, learned counsel appearing on behalf of the petitioner inter alias would submit that the learned Tribunal committed a manifest error in passing the impugned judgment in so far as it failed to take into consideration that not only till 1st January 1980, the Preventive officers/the Examiner of Customs and Inspectors of Central Excise had been getting the same scale of

pay, pursuant to or in terms of the recommendations made by the Fourth Pay Commission and the Fifth Pay Commission beginning from 1st January 1986, they have again been placed on the same scale of pay. According to the learned counsel, having regard to the fact that they had all along been getting the scale of pay, the burden of proof was on Central Government to show as to why they would not be placed at par as regards grant of scale of pay during the intervening period. The learned counsel would contend that the very fact that the second respondent had strongly recommended the case of the petitioner, clearly goes to show that his petitioner's claim was genuine. In any event, contends the learned counsel, the posts are inter-changeable and whereas the petitioner can be deputed to the other Department, the Preventive Officers and the Examiners of Customs are also deputed to the Department wherein the petitioner had been working. The learned counsel would contend that it is not correct to say that the petitioner is claiming the revised scale of pay in terms of the doctrine of "equal pay for equal work" but according to her, the very fact that the posts are interchangeable, is itself a clear pointer to the fact that the petitioner should have been treated similarly. The learned counsel in support of the said contention in the aforementioned condition strongly relied upon the decision of the Apex Court in State of Andhra Pradesh and Others Vs. G. Sreenivasa Rao and Others, , The Employees of Tannery and Footwear Corporation of India Ltd. and Anr. v. Union of India and Ors., 1991 Supl. 2 SCC 565 and Union of India and Others Vs. Anil Kumar and Others,

8. Ms. Acharya, learned counsel appearing on behalf of the respondents, on the other hand, while supporting the judgment of the learned Tribunal, inter alia, submitted that by reason of change in nomenclature of the designation, no special status had been conferred upon the petitioner. Our attentions has been drawn to the order dated 21st May 1980 wherein it was held:

"OFFICE ORDER NO. 24/80

The following officials who had appeared in the examination and viva-voce test for the post of Examiner of Customs (SG) & Examiner of Customs (OG) (since redesignated as Intelligence Officer (SG) & (OG) respectively) in this Directorate held in January & May, 1980 respectively are declared to have qualified in the said examination. This is, however, subject to their qualifying in the physical standard test prescribed in this regard & conforming to the age limitation.

1. Intelligence Officer (SG)

1. Shri J.P. Jain, Assistant.

2. Shri Jatinder Kumar, Assistant

2. Intelligence Office (OG)

1. Shri. B.D. Misra, Stenographer (Gr. II)

2. Shri. R.N. Sharma, Assistant.

They are further requested to report to the Assistant Collector (Admn) on 24.5.80 at 10.00 A.M. for physical test."

9. Out attention has further been drawn to a letter dated 25th May 1979 which is in the following terms:

"Subject: Change of designation of Groups "A" "B" and "C" executive posts in the Directorate of Revenue Intelligence.-

Sir,

I am directed to refer to your U.O. No. 311 / 9 /72 - Admn., dated 21-12-1978 on the subject cited above and to convey the sanction of the President to the change of designations as mentioned in the enclosure to this letter with effect from the date(s) the changed nomenclatures are notified under the Customs and Central Excise Acts in your Directorate.

2. The re-designation is subject to the condition that this would not lead to any claim for higher scales at a later stage and that the posts in the scales of pay of Rs. 550-900 and Rs. 425-800 would continue to be Non-Gazetted.

3. This issues with the concurrence of Finance Branch of this Department vide their U.O. No. 1536 /79 - IF. III, dated 14-5-1979.)"

10. The learned counsel would contend that it may be true that by reason of the said office orders, the petitioner had been exempted from appearing at the physical standard test but thereby no further benefit could be granted having regard to the fact that so far as the post held by the petitioner vis-a-vis those of Examiner/Preventive Officers and Examiner of Customs is concerned, not only the modes of recruitment are different, the sources thereof are also different.

11. Having heard the learned counsel for the parties and having perused the judgment of the Tribunal, we are of the opinion that the learned Tribunal has approached the matter from a wrong angle. The recommendations of the Fourth Central Pay Commission have not been placed before us. However, the recommendations of the Fifth Central Pay Commission have been placed; the relevant extract thereof is in the following terms:

"66.130 Intelligence Officers of the Directorate have demanded revision of their pay scale with retrospective effect from 1.1.80 when it was revised in case of their counterparts in the rest of the Department. All our recommendations shall have only prospective effect and we are, Therefore, unable to recommend revision of pay scale of Intelligence Officers retrospectively. After 1.1.1986, there is no disparity in pay as the pay scale of the Intelligence Officers is identical to that of their counterparts in Customs and Central Excise Department.

66.131 The officers deputed to the Directorate of Revenue Intelligence and Anti-Evasion are entitled to Special Pay @ 12.5% of their basic pay subject to maximum of Rs. 400 P.M. However, since no such special pay is admissible to officers borne on permanent strength of the Directorate, it has given rise to a

demand that all officers in the Directorate should be paid special allowance, as their duties are alike. After considering the matter, we recommend that no special allowance be paid to officials who are borne on the permanent strength of the Directorate. Even in case of others deputed to the Directorate, only the normal deputation duty allowance should be paid."

12. A bare perusal of the said recommendations would clearly go to show that the Fifth Central Pay Commission only negative the contention that the scales of pay of the Intelligence Officers be directed to be revised retrospectively, but in truth and substance accepted that the claim as regard parity in the scale of pay was otherwise genuine. The Commission, Therefore, has expressed its inability to do so but it cannot be said that the claim as such had been rejected.

13. It is pertinent to note that the Fifth Central Pay Commission itself had considered the Examiner of Accounts and Preventive Officers working in the other Department as counter-part of the Intelligence Officers of the Directorate, which again clearly goes to show that the holder of the posts are similarly situated.

14. The learned Tribunal, Therefore, misdirected itself in so far as it failed to pose unto itself a right question. It will bear repetition to state that what was rejected by the Fifth Central Pay Commission was merely the claim that their scale of pay be revised w.e.f. 1st January 1980 and only in that context, the recommendations of the Fourth Pay Commission had been referred to. Such an opinion had been formed by the Central Pay Commission only on the ground that it did not have any jurisdiction in that behalf. Evidently, the Fifth Central Pay Commission which was required to fix the scale of pay w.e.f. 1st January 1996, could not have directed revision in the scale of pay retrospectively with effect from 1st January 1980 particularly when the Fourth Central Pay Commission had already brought all the officers at par from 1st January 1986.

15. The learned Tribunal was not correct in holding that, as noticed hereinbefore, that the Inspectors of Central Excise/Preventive Officers/Examiners had been granted a higher scale of pay of Rs. 550 - 900 for same otherwise valid reasons and as such the approach of the learned Tribunal, in our opinion, must be held to be wrong.

16. It is now trite that if all along, except for a brief period, the officers had been treated to be at par and the posts held by them are inter-changeable, in our opinion, an anomaly does exist. In a situation of that nature, it is for the respondents to establish that in a case of this nature, not only the posts are inter-changeable, their designations also change. It is clear that discrimination had been made as regards the grant of scale of pay only for a brief period.

17. In State of Andhra Pradesh and Others Vs. G. Sreenivasa Rao and Others, it has been held:

"15. "Equal pay for equal work" does not mean that all the members of a cadre

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

18. In the instant case there does not exist any such valid reason.

19. Only because at the time of grant of re-designation, the petitioner had forsaken his claim for higher pay by itself would not mean that thereby he had waived his fundamental right as enshrined in Articles 14 and 16 of the Constitution of India. The question was as to whether he was entitled to the same scale of pay with his counter parts in the other department during the intervening period.

20. It has not been disputed that the job of all concerned is same. The posts are not only interchangeable; the designation also changes when one is deputed from one department to the other. It is not a case where the job of equation of post is to be done by the Tribunal / Court. It has already been done by the Pay Commission.

21. In *The Employees of Tannery and Footwear Corporation of India Ltd. and another Vs. Union of India and others*, it was held:

"16..... Here we are not concerned with equation of posts because the posts falling in the above-mentioned four categories of employees in the respondent corporation as well as the Cotton Corporation of India are of the same level and employees working on these posts were having the same pay scales in 1970. There is nothing on the record to show that after 1970 there has been any change in the duties and functions of the persons holding these posts in the two corporations which may justify fixation of different pay scales for these posts in the two corporations....."

22. Yet again in *Union of India and Others Vs. Anil Kumar and Others*, , the law has been laid down in the following terms:-

"26. This view is strengthened more on account of the dismissal of the claim of

Sass praying for their placement in the senior pay scale. There is no denial of the fact that before and after the recommendations of the various Pay Commissions the Assistant Foremen had been in the higher pay scale as compared to Sass and Draughtsman Grade I. For a welfare State a healthy and energetic civil service is a guarantee for a good administrative system entrusted with the governance for the establishment of the rule of law. Security of tenure and the service conditions of the employees is of paramount consideration to achieve the goals for having an effective and vibrant civil service in the society. No Government can resort to actions depriving the benefits to a section of the service en bloc which admittedly is to their disadvantage. Such en bloc deprivation of the promotional avenues and service benefits cannot be sustained when no cogent reasons are assigned by the administrative set-up. Resort to differential treatment in the service can be had only for achieving the efficiency in the service or any other specified objective declared to be attained. No discrimination can be permitted only at the whims of the administration or to satisfy another section of the civil service. The Union of India in this case has not been in a position to justify the differential treatment made to the Assistant foremen by putting them en bloc junior to the Senior Scientific Assistants particularly when they have all along been found to be enjoying better position and higher grade as compared to Sass in the junior pay scale."

23. For the foregoing reasons, the impugned judgment cannot be sustained which is set aside accordingly and the Original Application of the petitioner is allowed. The writ petition is allowed, but without any order as to costs.