
(2011) 08 DEL CK 0334

In the Delhi High Court

Case No : Writ Petition (C) 760 of 2011

S. Umashankar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0334

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.S. Mishra, for the Appellant; Ashwani Bhardwaj, Bhupinder Sharma, Dy. Cmdt., BSF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioners, Assistant Sub-Inspectors, Sub-Inspectors and Inspector, Pharmacists stake a claim to be paid salary in the same pay band with same grade pay as is paid to pharmacist employees in CGHS and additionally pray that they be permitted to serve till they attained the age of 60 years, since this is the age of superannuation of pharmacists employed under CGHS. The Petitioners state that their age of superannuation being restricted to 57 years is resulting in discrimination against them.

2. The basis of the claim is that working as pharmacists, on different posts under BSF, Petitioners render qualitative and quantitative same service as is rendered by pharmacists employed under CGHS.

3. It is not in dispute that para-medical set up under BSF was initially as per the Indian Pharmacy Act 1948. Matriculates possessing No. diplomas but having some experience were appointed as pharmacists in the rank of Assistant Sub-Inspector. Some having diplomas were also appointed.

4. At that point of time the cadre of pharmacists was non-combatized.

5. Pharmacists appointed under Clause 31(d) of the Pharmacy Act did not

possess either a degree or a diploma in pharmacy related courses, but experience gained by them make them eligible to be registered as pharmacists.

6. In other words, the situation was fairly fluid.

7. On 19.1.1976, the Cadre Controlling Ministry i.e. the Ministry of Home Affairs combatized the cadre of paramedics which included the pharmacists.

8. Erstwhile paramedic in the post of "Sister-in-Charge" were conferred the rank "Inspector". "Staff Nurse" was conferred the rank "Sub-Inspector". Radiographers, Compounders and Dressers were conferred the rank "Assistant Sub-Inspector" and Laboratory Technician was conferred the rank "Head Constable".

9. Apart from salary in the scale applicable, which we note was the same as per the non-combatized post, these persons became eligible to uniform with uniform allowance as also rations and such other canteen facilities as were admissible to the combatized staff.

10. Needless to state, the age of retirement was as was the age of retirement in the same posts for combatized staff.

11. It is thus apparent, that as a result of combatized the staff, in addition to the salary and other allowance which they were hitherto fore getting, became the beneficiaries of uniform, uniform allowance as also rations etc., which hitherto fore was not given to them.

12. Decision to combatize the para-medical staff has not been questioned by anybody for the obvious reasons, when combatization took place, the para-medical staff started getting facilities in addition to the salary which they were receiving and we note that at point of time the salary was the same as was paid to their counterparts in CGHS.

13. As time passed by, pay revisions took place and needless to state the facilities available were taken into consideration from time to time.

14. Pertaining to the Assistant Sub-Inspectors, Sub-Inspectors and Inspectors, vis-?-vis their counterparts working under CGHS it has to be noted that they are all placed in the same pay band but with different grade pays. Whereas for analogous posts the grade pay in CGHS is Rs. 4,600/-, Rs. 4,800/- and Rs. 5,400/- the corresponding grade pay in BSF is Rs. 4,200/-, Rs. 4,600/- and Rs. 4,800/-.

15. But, it has to be kept in mind that those who are serving as paramedics under BSF are issued either ration or a ration allowance and additionally are given a uniform as also uniform allowance. Thus, the additional benefits given under BSF, being not available under CGHS has obviously resulted in the differential grade pay.

16. We find No. discrimination. On the issue of difference in age of retirement,

the issue has been settled by the Supreme Court in the decision reported as Union of India (UOI) and Another Vs. S.S. Ranade, . The decision holds that entitlement to serve till a particular age can be fixed by rules. Retirement of BSF personnel it was recognized that officers up to the rank of Commandant (Selection Grade) could be retired at an age less than the officers holding superior posts.

17. Law permits different age of retirements in different cadres.

18. We find No. merit in the writ petition and dismiss the same but refrain from imposing costs.