
(2008) 01 DEL CK 0083

In the Delhi High Court

Case No : Writ Petition (C) No. 17859 of 2006

Smt. H.K. Bhatia (Retd.)

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0083

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : O.P. Saxena, for the Appellant; Dalip Mehra, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Order dated 1.12.2006 passed in this writ petition would depict the controversy involved. This order reads as under:

CM. 14823/2006.

Exemption allowed subject to all just exceptions.

WP(C)17859/2006

The main contention of the petitioner is that one Ms. Lavlin Jain who was junior to the petitioner had received the benefit of preponement of increment since her juniors had received the same earlier to her. Accordingly, he claims that petitioner is entitled to similar treatment when her junior has been given the benefit of preponement of increment.

Issue notice to the respondents to show cause as to why rule nisi be not issued, returnable on 25th April, 2007.

Mr. Anil Nag appears and waives service of notice. Let counter-affidavit be filed within four weeks. Rejoinder, if any, within four weeks thereafter.

CM.14822/2006

Dismissed as not pressed.

2. The petitioner who was working as Junior Programme Assistant with the Deputy Director General, Computer Centre in the Ministry of Statistics and P.I. has since retired from service. She, however, is pressing her claim for stepping up of her pay. The claim is founded on the averments that she was promoted to the rank of Jr. Programme Assistant on 18.6.1987 and another person Smt. Lovlin Jain was promoted as Jr. Programme Assistant w.e.f. 26.2.1988. Thus she was promoted prior to Smt. Lovlin Jain and Smt. Lovlin Jain was also junior to her in the lower rank, namely, Data Processing Assistant/Tape Librarian (DPA/TL). Post of Jr. Programme Assistant was re-designated as Data Processing Assistant-A (DPA-Grade A) on 11.9.1989 and this decision was given effect from 1.1.1986. Pay scale was also revised to Rs. 1600-2660. The increment of Smt. Lavlin Jain in the grade of Rs. 1600-2660 was preponed from September to April vide orders dated 30.7.2004 As a result thereof, her pay was stepped up to the same stage as her junior, namely, junior of Smt. Lavlin Jain to avert an anomaly. In these circumstances, as on 1.4.1986 pay of Smt. Lavlin Jain was fixed at Rs. 1650/- whereas basic pay of the petitioner as on that date was Rs. 1600/-. Since the stepping up of the pay of Smt. Lavlin Jain by preponing the date of increment was to remove the anomaly which has arisen because of her junior getting higher pay, same treatment had to be meted out to the petitioner as well who was senior to Smt. Lavlin Jain. On this basis she requested for preponing of her increment in a similar manner from September to April. This representation was rejected. Her OA filed to claim this relief before the Central Administrative Tribunal, Principal Bench, Delhi has also been dismissed vide judgment dated 13.4.2006. She even preferred Review Application which met the same fate. Feeling aggrieved, present petition is filed.

3. A perusal of the judgment dated 13.4.2006 passed by the learned Tribunal would reveal that the Tribunal was of the view that even if Smt. Lavlin Jain and three other persons were junior to the petitioner as DPA, her case was not similarly placed to the aforesaid officials. The petitioner had earned increment on first day of September every year. She was promoted to the post of DPA in the year 1984 on ad hoc basis and regularized on 16.6.1987 and Smt. Lavlin Jain etc. were appointed in subsequent years. Further, the petitioner's pay was fixed in the said grade in terms of option furnished by her. Moreover, when the petitioner's pay was fixed in the revised pay scale of Rs. 1600-2660, on that date there was no anomaly as far as pay fixation is concerned. This anomaly had arisen because of the accrual of next increment to different persons in different months, which certainly varies. Therefore, such a fixation could not be termed as anomaly and the Tribunal was also of the view that the petitioner was claiming equal pay for equal work which claim was unjustified and untenable in law as there could be variety of reasons which may contribute to different pay irrespective of seniority and the claim could not be made on this ground, inasmuch as, doctrine of 'equal pay for equal work' cannot be read in Article 14 of the Constitution. The date of increment which varies from individual to

individual is reasonable classification. The Tribunal referred to the judgment of the Supreme Court in the case of State of Andhra Pradesh and Others Vs. G. Sreenivasa Rao and Others, and quoted the following observations:

without considering the scope of these rules and without advertent to the reasons for fixing the junior at a higher pay, the High Court and the Tribunal were not justified in coming to the conclusion in an omnibus manner that whenever and for whatever reason a junior is given higher pay, the doctrine of "equal pay for equal work" is violated and the seniors are entitled to the same pay.

4. The Hon^{ble} Supreme Court further held therein that-

"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 person 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 as 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.

5. Learned counsel for the petitioner submitted that the senior was entitled to stepping up of pay with reference to junior's pay if the senior as well as junior discharges the same duty with similar responsibility. In support of this proposition, he relied upon the judgment of Supreme Court in the case of Calcutta Municipal Corporation and Another Vs. Sujit Baran Mukherjee and Others, . However, he could not dispute the factual position in this case, namely, the petitioner was placed in the pay scale of Rs. 1600-2660 from 1.1.1986 and the petitioner's pay was fixed in the said grade in terms of option furnished by her and when the petitioner's pay was fixed in the revised pay scale of Rs. 1600-2660, on that date there was no anomaly as far as pay fixation is concerned. Her pay was, Therefore, properly fixed on giving the option and such an option once exercised was to be treated as final. Smt. Lavlin Jain and other officials whose date of increment had been fixed as 1.4.1986 was by virtue of order of Tribunal had sought redesignation and higher scale on entirely different basis.

6. We are, Therefore, of the opinion that the Tribunal was right in relying upon the judgment of the Supreme Court in the case of State of Andhra Pradesh and

Ors. v. G. Sreenivasa Rao and Ors. (supra) and in this case judgment of Calcutta Municipal Corporation and Anr. v. Sujit Baran Mukherjee and Ors. (supra) will have no application. That was a case where the court held that the senior would be entitled to stepping up of pay with reference to junior's pay if both discharge the same duties under the same responsibility and not in different circumstances. Therefore, this case would not help the petitioner in view of the distinction we have drawn above.

7. We, Therefore, do not find any merit in this petition which is accordingly dismissed.