
(2007) 08 DEL CK 0060

In the Delhi High Court

Case No : Writ Petition (C) No. 4172 of 2001

Union of India (UOI)

APPELLANT

Vs

Chaffeurs (Class-III) Association

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1)

Citation : (2007) 5 ILR Delhi 99 : (2008) 2 SLJ 272

Hon'ble Judges : S.L. Bhayana, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; K.C. Mittal, for the Respondent

Final Decision : Allowed

Judgement

S.L. Bhayana, J.—The petitioner, by this Writ Petition, has assailed the order, dated 27th February, 2001, passed in MA No. 204/2000 of OA No. 76/1999 by the Central Administrative Tribunal, Principal Bench, New Delhi (for short "the Tribunal"). The appellant, through this writ petition, has challenged the findings of the Tribunal, wherein the O.A. of the respondents was allowed on the ground that the Chauffeurs in Group "C" category were discriminated against the similarly situated persons. Incidence of financial liability cannot be made the rationale for treating the Chauffeurs at par with Group "D" when as per the rules applicable categorization is to be in Group "C".

2. Petitioners have assailed the impugned order on the grounds that grant of some benefits to Chauffeurs of Group "C" at par with Group "D" category is not downgrading and is not discriminatory but a policy decision taken after taking due account of exigencies involved.

3. The facts culminating in the filing of present petition are that a letter No. Q/GA/791/80/89 dated 26th December, 1989 laying down the terms and conditions of service of Non-IFS (B) members of Staff posted in Indian Missions and Posts Abroad was issued. The respondents-chauffeurs, who are "Group C" employees

of the Ministry of External affairs challenged the said letter on the grounds that although they are Group "C" employees yet they are being treated at par with Group "D" employees, insofar as the grant of traveling allowance for family, furniture, residential accommodation, insurance of personnel effects, children educational allowance, cutlery and crockery grant and children holiday packages are concerned. The respondents contention is that once they are categorized as Group "C" employees all benefits granted to Group "C" employees ought to be granted to them and the present treatment of granting them benefits at par with Group "D" employees is discriminatory, arbitrary and devoid of any rationale.

4. The petitioners, in their writ petition, have urged that vide order No. Q/GA/852/6/78(EAI/93/I/4) dated, 10th February, 1993, the Ministry permitted the families of Chauffeurs and Group "D" employees to accompany them at government expenses to SAARC countries namely, Nepal, Bhutan, Bangladesh, etc.

5. The respondents aggrieved of the alleged discrimination moved the Tribunal and sought quashing of the said letter and also a declaration entitling them to all allowances and benefits as given to other Group "C" employees. In the said letter applicable to the chauffeurs, except in the matter of passage for family and insurance of the personal effects in which provisions relating to Group "D" officials would apply, for the rest of the benefits the chauffeurs are entitled to same provisions as applicable to members of IFS (B) belonging to and are of equivalent range. The argument raised by the respondents before the Tribunal was that members of IFS (B) also fall in the Group "C" employees and as per the letter impugned, they are entitled to all the benefits mentioned therein. However, the Chauffeurs who also belong to Group "C" have been partially allowed the benefits mentioned in the impugned letter and insofar as passage of family and insurance of personal effects are concerned they have been treated at par with the Group "D" employees and have been denied those benefits. The respondents had made representation to the Joint Committee meeting in this regard, however, no corrective action was taken and vide letter dated 10th February, 1993, the respondents were allowed to take their family members to some of the SAARC countries on experimental basis and the said facility was subject to review after three years.

6. The tribunal, while allowing the OA of the respondents, held that the said letter was discriminatory. The findings of the tribunal on the said issue are as under:

Classification of Chauffeurs in Group C was a policy matter but grant of some benefits of Group C to Chauffeurs is not related to a policy matter. The applicants could have been kept in Group D and denied all benefits of Group C but once they had been kept in Group C all benefits of Group C have to be granted to them and interference by the court in the matter of denial of some benefits of Group C to chauffeurs who belong to Group C is justified ? the court can look into the reasonableness of denial of such benefits and interfere with the same if

arbitrariness or absence of any discernible principle is noticed in the same.

7. The Tribunal further held that

Intention behind non grant of some benefits as are available to Group C employees posted in Missions and Posts abroad is not to discriminate staff car Drivers by equating them as Group D employees but financial considerations ? in the present matter also financial hardship or incapacity of the Government to bear the additional burden involved in granting some benefits as made available to other members of Group C when posted abroad, cannot be taken Cognizance of in the teeth of down gradation and discriminatory treatment meted out to staff drivers while posted abroad in the matter of benefits and facilities.

8. With these observations, the Tribunal quashed the impugned letter, dated 26th December, 1999 and directed the respondents to consider prospectively grant of allowances and benefits to chauffeurs as are available to other Group "C" employees particularly LDC's while on posting to Foreign Missions/posts as have hitherto been denied to them.

9. The petitioner, through this writ petition, has urged that the Tribunal's findings are not maintainable as they are contrary to the public policy. Highlighting the government stand on the Chauffeurs of Group "C" being granted some Group "D" facilities petitioner stated that the chauffeurs are recruited as per Recruitment Rules, the post of Staff Car Driver is classified as General Central Service Group C (Non-Gazetted), Non-Ministerial. There are three Groups of Chauffeurs:

- a. Ordinary Group (Rs. 3050-75-3950-80-590, scale equivalent to that of LDC)
- b. Group II (Rs. 4000-100-600- scale equivalent to that of UDC)
- c. Group I (Rs. 4500-125-7000- scale between that of UDC and Assistant)

10. The above-mentioned classification on the basis of pay or pay scale is not all encompassing. It differs with the purpose for which it is intended. To emphasize their contention, the petitioners stated that even though the LDC's and Chauffeurs have been placed in the same group, they form two distinct categories of officials. In the IFS(B), 85% of the recruitment of LDCs is done on the basis of All India competition held by Staff Selection Commission whereas the Chauffeurs are recruited through promotion from Group "D" or else through employment Exchange. The minimum educational qualification is 8th standard pass whereas for Clerks grade selection, it is metriculation. The post of Clerk is ministerial whereas that of Chauffeurs is non-ministerial and there is no functional nexus between these two posts. Clerical cadre in the ministry forms part of IFS (B)- regularly constituted service under the RCSP Rules, 1964, whereas the Chauffeurs are non-IFS (B) Cadre and entitlements are regulated under Ministry's letter amended from time to time. The chauffeurs are also entitled to overtime whereas the LDC's are not entitled to any such allowance. The intelligible differentia as mentioned above empower the government to

frame different conditions of posting of Chauffeurs in missions/posts abroad.

11. We have heard learned Counsel for the parties and perused the documents available on record along with written submissions. Learned Counsel for the petitioner has argued that besides there being an intelligible differentia leading to rational and reasonable basis of distinction, the impugned decision of the Ministry is also based on certain other pertinent and important factors. Counsel for the petitioner drew our attention to the fact that in certain countries like SAARC countries, benefits of travel allowance for the family and residential accommodation on transfer to Chauffeurs is justified as the living conditions are similar to that of our country. However, even in those SAARC countries the above-mentioned benefits are granted, if the situation in that country is conducive for the family in terms of security and safety of the family of the Chauffeurs. Further the chauffeurs are generally deployed with the Head of Mission/post and their very nature of duties is such that they are expected to stay within the Mission premises or close by from where they can be accessed easily. The residential accommodation in advanced countries are located at far off places and permitting a chauffeur to stay far away from the Chancery tend to hamper the duties of the Chauffeurs and, Therefore, he is given accommodation near to the Chancery. The other logistics which lead to the differentiation are that living conditions and social set up differ from country to country and the families may be unable to adjust to the changed social environment leading to greater isolation and sense of disorientation. The letter/notification affecting the benefits of the chauffeurs that the ministry takes out and amends from time to time gives the flexibility to the Ministry in deciding the facilities to be granted to the chauffeurs posted outside country. These entitlements vary according to the countries they are posted. Travel allowance may be granted for posting to some of the SAARC countries. Learned Counsel of the petitioner also drew our attention to the proclaimed policy of the Government of India to curb expenditure on its establishment. The Ministry of Finance in its various circulars have emphasized on cost cutting. He concluded his arguments contending that there is a difference between "distinction" and "discrimination". The concept of equality before law means that among equals the law should be equal and should be equally administered, and that the likes should be treated alike.? The equality before law does not mean different things are treated alike though they were the same. The concept of equality does not prevent the state in making rational distinction between the persons or things that are grouped together.

12. Having heard learned Counsel for the parties at length, the primary question which arises for our consideration is whether the aforementioned letter of the Ministry is discriminatory in nature and violative of Article 14 of Constitution of India.

13. Article 14 forbids class legislation but permits reasonable Classification subject to the condition that it is based on an intelligible differentia and that the differentia must have a rational relation to the object sought to be achieved.

Constitutional interpretation is a difficult task. Its concept varies from statute to statute, fact to fact, situation to situation and subject matter to subject matter.

14. Supreme Court in the case of *M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and Another*, extensively dealt with the question of discrimination alleged under Article 14 of the Constitution. As far back as in 1968 in *State of Mysore and Another Vs. P. Narasing Rao*, the Supreme Court observed:

It is settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated. Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favored. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection.

15. In *Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others*, the Supreme Court held as under:

While considering the question of application of principle of "Equal pay for equal work" it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scale but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequal cannot claim equality.

16. Even in cases where two classes of people perform similar and identical functions the SC in *V. Markendeya and Others Vs. State of Andhra Pradesh and Others*, held as under:

where two classes of employees perform identical or similar duties and carrying out the same functions with the same measure of responsibility having same academic qualification, they would be entitled to equal pay. If the State denies

them equality in pay, its action would be violative of Articles 14 and 16 of the Constitution, and the Court will strike down the discrimination and grant relief to the aggrieved employees. But before such relief is granted the Court must consider and analyze the rationale behind the State action in prescribing two different scale of pay. If on an analysis of the relevant rules, orders, nature of duties, functions, measure of responsibility, and educational qualifications required for the relevant posts, the Court finds that the classification made by the State in giving different treatment to the two classes of employee is founded on rational basis having nexus with the objects sought to be achieved, the classification must be upheld. Principle of equal pay for equal work is applicable among equals, it cannot be applied to unequal. Relief to an aggrieved person seeking to enforce the principles of equal pay for equal work can be granted only after it is demonstrated before the Court that invidious discrimination is practiced by the State in prescribing two different scales for the two classes of employees without there being any reasonable classification for the same. If the aggrieved employees fail to demonstrate discrimination, the principle of equal pay for equal work cannot be enforced by Court in abstract. The question what scale should be provided to a particular class of service must be left to the executive and only when discrimination is practiced amongst the equals, the Court should intervene to undo the wrong, and to ensure equality among the similarly placed employees. The Court however cannot prescribe equal scales of pay for different class of employees.

17. From the above-mentioned judicial pronouncements of the Supreme Court, it can be inferred that classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be arbitrary or unreasonable. The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience or other factors which justify classification.

18. Applying the principles illustrated above in the present case, it is quite apparent that although the chauffeurs are clubbed and graded with the LDC's and belong to same grade as that of LDC certain benefits extended to Group "C" employees are denied to them. The said classification is on the basis of their method of recruitment, of their qualifications and of the fact that they are non-ministerial staff. Further their nature of duties is such that the benefits extended to ministerial staff cannot be given to them. Further, financial constraint is another detriment in not extending those benefits.

19. From the foregoing discussion, it would follow that the benefits to an employee, would depend on nature of duties, qualification, method of recruitment, prevailing work conditions etc. even though categorized in the same group. Equality principle cannot be applied in a mechanical manner only on the basis that Chauffeurs have been placed under the category of Group "C" employees. The demand of Chauffeurs in seeking the same benefits as that granted to LDC's in particular on the grounds of equality of belonging to the

same group is not justifiable. The nature of duties, qualifications and responsibility, effectiveness with which the duties can be discharged are different for a post of LDC and that of Chauffeur. On an analysis of nature of duties, functions, measure of responsibility, and educational qualifications required for the relevant posts, we feel that the classification made by the State in giving different treatment to the two classes of employee namely, LDC and Chauffeurs is founded on rationale basis having nexus with the objects sought to be achieved, the classification must be upheld. The argument that they belong to same Group and, Therefore, deserve similar treatment cannot be accepted, as it would permeate inequality.

20. We are conscious of the amendment brought out by the Ministry allowing to take their families to neighboring countries, subject to the security considerations, proximity of these stations to India and the life standards and cost of living comparable to India. It indicates that government is conscious of their concerns and has addressed them wherever feasible.

21. In view of the foregoing discussion we allow this writ petition and set aside the impugned order of the Tribunal dated 27.2.2001. No order as to costs.