

(2004) 04 GAU CK 0057
In the Gauhati High Court
Case No : Writ Petition (C) No. 26 of 2001

Van Khuma

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2004) 2 GLT 571

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : G. Raju, for the Appellant; Helen Dawngliani, for the Respondent

Judgement

B.K. Sharma, J.—This writ petition has been filed by the Mizoram Chainmen Association of Land Revenue and Settlement Department, Aizawl representing the interest of the 55 of its members who have been working as Chainmen under the said department. They are aggrieved by down gradation of their pay scale which was effected in the year 1978.

2. Prior to implementation of the Central Civil Services (Revised Pay) Rules, 1973 the prescribed pay scale of Chainmen was Rs. 85-135/- p.m. which was identical with that of the pay scale given to Duftry under the Government of Mizoram. The post of Chainmen is a Grade-IV post and the pay scale prescribed for the same i.e. Rs. 85-135/ - P.M. was higher than that of other Grade-IV posts like Peon, Chowkidar, Sweeper etc. Pursuant to the revision of pay in the year 1973, the pay scale of Rs. 85-135/- was revised to Rs. 200-250/-. Such revision was effective from 1.1.1973 and the members of the Petitioner's Association enjoyed the benefit of revised pay scale till 1978.

3. In the year 1978 such revised pay scale of Rs. 200-250/- being enjoyed by the Chainmen was reduced and re-fixed at a lower pay scale of Rs. 196-232/-. Admittedly, this was done without any notice to the incumbents who were adversely effected. According to the statements made in the writ petition, such a

course of action was adopted on the plea that the Government of India, in their CCS (RP) Rules 1973 had notified the pay scale of Chainmen as Rs. 196-232/-. It is the case of the Petitioners that their pay scale could not have been reduced to Rs. 196-232/- from the earlier revised scale of pay Rs. 200-250/- inasmuch as they were initially appointed in the pay scale of Rs. 85-135/- which correspondingly got revised to Rs. 200-250/- According to the Petitioners the Chainmen under the Central Government Department were initially appointed in a lower pay scale of Rs. 70-85/- which was revised to Rs. 196-232/-. Further stand in the writ petition is that as against lower pay scale prescribed for other Grade-IV posts, the Petitioners in the cadre of Chainmen were enjoying the higher pay scale of Rs. 85-135/-.

4. The Petitioners have given the example of Central Police Naik vis-a-vis Naiks in Mizoram Police. The Mizoram Police Naik were enjoying the pay scale of Rs. 260-350/- prior to 1986 revision of pay as against the pay scale of Rs. 210-270/- enjoyed by the Central Government Police Naik. Such pay scale were revised to Rs. 950-1400/- in respect of Central Government Police Naiks and to that of Rs. 975-1660/- in respect of Mizoram Police Naik. This example has been given by the Petitioners to bring home their point that down-gradation of the pay scale of the Petitioners on the plea of same pay scale with that of Central Government Chainmen was unjustified. In a nut-shell, it is the case of the Petitioners that such down-gradation of their pay scale from Rs. 200-250/- to that of Rs. 196-232/- drawing the analogy with that of the Chainmen in Central Government Department was wholly unjustified inasmuch as the Petitioners were enjoying a higher pay scale than that of the Chainmen of the Central Government Department from before and in any case such equation of pay scale with that of Central Government Department without attending to other factors such as recruitment qualification, mode of recruitment, nature of duties involved, responsibility entrusted to the incumbents etc. is illegal.

5. The Petitioners has made a further grievance that the Respondents being not content with such arbitrary down-gradation of the pay scale of the Petitioners, they have also been denied their career progression by way of providing adequate avenue of promotion which has resulted in stagnation. Various representations submitted by the Petitioners for redressal of their grievance having not evoked any response, the Petitioners have approached this Court by invoking the writ jurisdiction under Article 226 of the Constitution of India.

6. The Respondents have filed their affidavit denying the contention raised in the writ petition. Their stand in the affidavit is that the down-gradation of the pay scale of the Petitioners was effected to make the pay scale at par with that of the Chainmen of the Central Government Department. They have admitted that as against the prescribed pay scale of Rs. 70-85/- enjoyed by the Chainmen under the Central Government Department pursuant to the revision of pay in 1964, the Chainmen working in Mizoram under the State Government enjoyed the pay scale of Rs. 85-135/-. They have also admitted in their affidavit that the lower

pay scale of Rs. 70-85/- prescribed for other Grade-IV posts such as Peon, Chowkidar etc. got revised to Rs. 196-232/- in the year 1973. According to the Respondents there was no corresponding revision of the pay scale of Rs. 85-135/- in ROP Rules of 1973. Since there was no revision, the Chainmen under the Government of Mizoram was given the benefit of standard conversion of Rs. 200-250/- which was duly approved by the Directorate of Accounts and Treasuries, Mizoram. The Respondents have admitted that such revision of pay scale was duly recorded in their service books. Such revised pay scale was enjoyed by the incumbents for long six (6) years. However, due to certain objections a clarification was sought for. The Government of Mizoram by its letter dated 22.6.1978 intimated the Director of Land Revenue of Settlement that a proposal for notifying a higher pay scale of Rs. 200-250/- was submitted to the Government of India which in turn reiterated that it had not been found possible to give a higher scale of pay than Rs. 196-232/- As regards the plea of stagnation, the Respondents have stated in their affidavit that the Petitioners are entitled to further promotion to the cadre of Field Assistant, 50% of which are filled up by promotion from suitable Chainmen with not less than of ten (10) years service.

7. I have heard Mr. G. Raju, learned Counsel appearing for the Petitioners and Ms. Helen Dawngliani, learned Counsel appearing for the Respondents.

8. Mr. Raju during the course of his argument submitted that the action on the part of the Respondents towards down-gradation of the pay scale of the Petitioners is perse illegal and arbitrary. He submitted that such a course of action could not have been taken by the Respondents without affording a reasonable opportunity of being heard. As regards the stagnation in the matter of promotion of the Petitioners, Mr. Raju submitted that there are only few posts of Field Assistant and the 50% of such posts cannot fulfil the aspiration of the Petitioners to have adequate avenue of promotions which naturally has resulted in virtual stagnation in the cadre of Chainmen. It is under this circumstances, he emphasised the need for time bound promotion scheme, cadre, restructuring, stagnation increment etc. for the Petitioners. Ms. Helen Dawngliani, learned Counsel appearing for the Respondents on the other hand submitted in reference to the stand in the affidavit filed on behalf of the Respondents that there was nothing wrong in down-grading the pay scale of the Petitioners. According to her, such a course of action had to be adopted in tune with the Central Government pay scale prescribed for the Chainmen. As regards the alleged stagnation, she submitted that adequate avenue of promotion having been provided to the category of chainmen by way of promotion to the post of Field Assistant, the Petitioners are not entitled to the any relief on that count.

9. I have considered the submissions made by the learned Counsel and have perused the materials on record. The cause of action for the Petitioners had arisen way back in 1978 when their pay scale was down graded from Rs. 200-250/- to Rs. 196-232/-. The Petitioners and for that matter, the members of

the Petitioner's Association ever since such down-gradation of their pay scale have been granted corresponding revised pay scale in the down-graded scale of pay all these years. It is also on record that in the year 1980, two posts of Chainmen were created by the Government of Mizoram in the pay scale of Rs. 196-232/- and had been filled up. Thus naturally, a question will arise as to whether the claim of the Petitioners is barred by limitation and there has been delay and laches on their part.

10. The Apex Court in the case of M.R. Gupta Vs. Union of India and others, has held that wrong fixation of pay is a continued wrong and gives rise to recurring cause of action each time the employee receives his salary. The Apex Court has held that so long the employees is in service, a fresh cause of action arises every month when he is, paid his monthly salary on the basis of a wrong computation. However, the Apex Court in the said case also held that recovery of arrears calculated on the basis of difference in the pay which becomes time barred would not be recoverable but the incumbent would be entitled to proper fixation of pay. In the instant case it is the case of the Petitioners that they have been paid their salary in the down graded pay scale and all corresponding revised pay scale of that down graded pay scale. According to them their grievances still subsists and cannot be said to be evaporate by efflux of time, The admitted position is that the Petitioners had been enjoying the pay scale of Rs. 200-250/- which was the corresponding revised pay scale to their pre- revised pay scale of Rs. 86-135/-. They enjoyed the revised pay scale for long six (6) years when the same was down-graded without even issuing any notice to them.

11. The Apex Court has consistently held that there cannot be any education in the time scale of pay without giving any opportunity to the incumbent, I may gainfully refer to the decision of the Apex Court as reported in Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. Shri L.N. Keshri and Others, and Bhagwan Shukla Vs. Union of India and others, . In the case of Divisional Superintendent (supra), the pay scale of the Respondents, Shri Keshri and others were reduced from Rs. 110-180/-to Rs. 105-135/-. on the plea of mistake in putting the Respondents in the grade of Rs. 110-180/-. The Apex Court after noticing that the Respondents were confirmed in the scale of Rs. 110-180/- and their pay had been fixed in the scale of Rs. 110-180/-, held that the same could not have been reduced without giving any opportunity to them. The Apex Court further held that the Respondents on confirmation became entitle to rights to the posts and to the scale of pay fixed by the authority, Similarly in the case of Bhagwan Shukla (Supra), the Apex Court held that the education of the pay from Rs. 190 to Rs. 181/- retrospectively in respect of the incumbent visited him with civil consequences. The Apex Court after noticing that the incumbent was not put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure held that there had been a flagrant violation of the principle of natural justice.

12. In the instant case there is no dispute that before reducing the pay of the

Petitioners they were not given any opportunity of being heard and were not even put on notice. On this score alone, the impugned decision of the Respondents towards reducing the pay of the Petitioners is not sustainable. It was argued on behalf of the Respondents that the Petitioners having been assigned the reasons for such down gradation of their pay which according to the Respondents had been so done upon getting the clarification from the Central Government and the Petitioners at least having come to know such reasons through the writ proceedings initiated by them, they are not prejudicially affected merely because no notice was issued to them before reducing their pay.

13. The Apex Court in the case of K.I. Shephard and Others Vs. Union of India (UOI) and Others, and in the case of Hindustan Petroleum Corporation v. H.L. Trehan as reported in (1989) 1 SCC 765 has held that post decisional hearing is no hearing in the eye of law. There can be no deprivation or curtailment of any existing right advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing condition of service of a government servant will offered against the provision of Article 14 of the Constitution of India. The post decisional opportunity of hearing does not subserve the rules of natural justice. Once a decision has been taken, there is a tendency to uphold it and on representation may not yield any fruitful purpose.

14. In spite of the aforesaid position of the fact and the law in respect of alteration of the existing condition of service of the Petitioners by way of reducing their pay scale, there is another facet of the matter. The impugned action was of 1978 and the Petitioner did not approach this Court making a challenge to the impugned decision. It is one thing to make a challenge to the wrong fixation of pay, may be at a belated stage, but it is another thing to make a challenge to the impugned decision which was taken by the Respondent way back in 1978. The writ petition was filed in 2001 seeking correct fixation of pay on the basis of the pay scale of Rs. 200-250/- which the Petitioners enjoyed for long six (6) years pursuant to the revision of pay in the year 1973. However, long 23 years had passed on when the Petitioners initiated this writ proceeding. During these 23 years, as per the averment made in the affidavit further appointments have been made to the post of Chairmen in the pay scale of Rs. 196-232. The pay has also been revised from time to time. In such a situation, it will not be appropriate for the writ Court to issue any mandamus to the Respondent to restore the pay scale of Rs. 200-250/- to the Petitioners with the benefit of all corresponding revised pay scale. Instead I feel it proper to direct the Respondents to re-consider the case of the Petitioners towards continuation of the pay scale of Rs. 200-250/- with granting of all corresponding revised pay scale. While considering the case of the Petitioners, the Respondents will bear in mind the following aspect of the matter:

(a) The pay of the Petitioners was reduced behind their back without affording

any opportunity of being heard.

(b) The Petitioners and for that matter, the incumbents in the cadre of Chainmen were enjoying the pre-revised corresponding pay scale of Rs. 200-250/- and their such pre-revised scale of pay was higher then the pay scale prescribed for other Group-D posts and the Chainmen in the Central Government Department.

(c) By the time, the Petitioners were given the revised pay scale of Rs. 200-250/- they were all permanent and confirmed employee and the said pay scale was attached to their posts.

(d) The pre-revised scale of pay of the Petitioners was in the Assam pattern and was not equated with that of the pay scale of Central Government and that the post of Chainmen in a Central Govt. department carrying a lower pay scale than the pay scale prescribed for the Chainmen of the State of Mizoram does not necessarily mean that the Chainmen of the State Govt. should be equated in their pay scale with that of the Central Govt. Chainmen.

(e) The example of Central Govt. Police Naik and the Mizoram Police Naik as referred to above should also be taken into consideration towards considering the case of the Petitioner.

15. The Respondents shall take a decision in the matter upon consideration of the above aspect consistently with the observations made above and the decision shall be arrived at within a period of three (3) months from the date of furnishing a certified copy of this judgment and order by the Petitioners and or receiving the copy of the same by the Respondents whichever is earlier.

16. It is made clear that the Petitioners shall not be entitled to any arrears in the event of a decision in their favour. However, they will be entitled to notional fixation of pay. In other words, the Petitioners would be entitled to proper fixation of pay and to cessation of a continuing wrong if upon consideration of the above aspect their claim is accepted.

17. This leads us to the question of stagnation as has been agitated by the Petitioners. Needless to say that the Petitioners belong to the lowest rung of the service. As per the own admission of the Respondent the Petitioners are only entitled to get promotion as Field Assistant by way of promotion within the quota of 50% of the posts. The number of posts as indicated in the rule are only few which according to the Petitioners are only six. 50% of the said six posts leaves only three posts for the incumbents in the cadre of Chainmen. Thus really speaking, the Petitioners have not been provided with adequate avenue of promotion and there is no denial that they have been made to stagnant. It is in this context, the Apex Court in the case of CSIR v. K.G.S. Bhatt as reported in AIR 1989 SC 1972 emphasised the need for providing adequate avenue of promotion. Reacting to the fact that the Respondent therein a qualified Engineer was left without opportunity of promotion for about 20 years, the Apex Court remarked that the same was indeed a sad commentary on the Appellant's

management. The Apex Court observed as follows:

It is often said and indeed, adroitly at organisation public or private does not "hire of hand" but engages or employs a whole man, The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See Principles of Personnel Management by Flipo Edwin B. 4th Ed. p. 246). Every opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance. among both non-managerial employees and their supervisors." (See Personnel Management by Dr. Udai Pareek p. 277). There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions. (See Management of Personnel in Indian Enterprises by Prof. N.N. Chatterjee, Chap. 12 p. 128). The Appellant appears to have overlooked this basic requirement of management so far as Respondent was concerned till N.R. and A.S. were introduced.

18. In the instant case, apart from providing only a limited scope of promotion to the cadre of Field Assistant only with a few posts, the Petitioners virtually are left with no avenue of promotion. It is in this context a model employer is expected to introduce stagnation increment, time bound promotion Scheme or Assured Career Progress Scheme etc. The Respondents are hereby directed to consider the case of the Petitioners to provide them with more promotional opportunity or to introduce ACP or time bound promotion scheme. Alternatively, the Respondents may also consider granting of stagnation increments to the Petitioners.

19. The above exercise shall also be carried out by the Respondents within the stipulated period of three months.

20. With the above direction, the writ petition stand disposed of. There shall be no order as to cost.