

Union Of India & Ors vs Dineshan K.K on 4 January, 2008

Author: D.K. Jain

Bench: C.K. Thakker, D.K. Jain

CASE NO.:
Appeal (civil) 25 of 2008

PETITIONER:
UNION OF INDIA & ORS.

RESPONDENT:
DINESHAN K.K.

DATE OF JUDGMENT: 04/01/2008

BENCH:
C.K. THAKKER & D.K. JAIN

JUDGMENT:

J U D G M E N T [Arising out of S.L.P. (C) No. 21222 of 2005] D.K. JAIN, J.:

Delay condoned.

2. Leave granted.

3. This appeal by the Union of India and the Director General of Assam Rifles arises out of the judgment and order dated 11th February, 2005 rendered by the Gauhati High Court in WP (C) No.497 of 2001. By the impugned order, while allowing the writ petition, directions have been issued that the permission granted by the Union of India vide its letter dated 3rd March, 1998, to re-designate the rank of Havildar (Radio Mechanic) as Warrant Officer as recommended by the Ministry of Home Affairs shall be carried out and the pay scale as admissible to their counterparts in the Central Reserve Police Force (CRPF) and the Border Security Force (BSF) shall be granted from the same date.

4. The nub of the grievance of the writ petitioner, working in the rank of a Radio Mechanic in the Assam Rifles was that the Ministry of Home Affairs and the Director General of Assam Rifles having accepted in principle that the members of the Assam Rifles, should be given the same rank and pay structure as was given to other central paramilitary forces, yet the same had been denied to them. It was pleaded that as the Ministry of Home Affairs had conveyed its decision to rationalize the rank structure of non gazetted personnel of central paramilitary forces vide order dated 26th January, 1998, equal pay structure in other ranks, including the Radio Mechanics in the Assam Rifles could not be denied. His further grievance was that after the implementation of the Fourth Pay Commission, the pay of the Havildar/GD and Head Constable/Radio Mechanic was fixed in the pay

scale of Rs.975-1660, without any discrimination between the general duty and technical categories but the discrimination surfaced when higher pay scale of Rs.1200-2040 was given to the Radio Mechanics working in the BSF, denying the same pay scale to the Radio Mechanics in the Assam Rifles. It was also pointed out that the Radio Mechanics working in the Delhi Police organization had been given a much higher pay scale on 10th October, 1997 which was being denied to the similar rank holders in the Assam Rifles.

5. The writ petition was contested by the Union of India. In the counter affidavit filed on its behalf, it was stated that on the recommendation of the Fourth Pay Commission, with effect from 1st January, 1986, the Assam Rifles personnel had been granted revised pay scales and allowances entirely on the lines of other central paramilitary forces. However, as the changes in the rank structure were not carried out in the Assam Rifles like in other central paramilitary forces, an apparent disparity in the service conditions of certain category of personnel including the rank of Radio Mechanic had arisen. It was also pointed out that the Assam Rifles Directorate had brought this disparity to the notice of the Ministry of Home Affairs in February, 1998, and had recommended the re-designation of Radio Mechanic and Head Constable in Assam Rifles as Warrant Officer and for replacement of pay scale of Rs.4000-6000 to bring them at par with their counterparts in other central police organizations. It was stated that in response to the said recommendation, the Ministry of Home Affairs vide letter dated 3rd March, 1998, had informed the Assam Rifles that they could re-designate the Head Constable (Radio Mechanic) as Warrant Officer provided their pre-revised and revised pay scales were identical to the pay scales of their counterparts in CRPF and BSF. However, the re-designation of the ranks could not be carried out in the light of the said communication as there was disparity between the pay scales of a Radio Mechanic in Assam Rifles and their counterparts in CRPF and BSF. It was conceded that though the academic qualification for recruitment to the post of Radio Mechanic in Assam Rifles as well as in CRPF and BSF was the same yet there was disparity in the revised pay scales between the Assam Rifles and the said two other paramilitary forces. The claim of the petitioner for higher pay scales on the lines of the pay scales of Delhi Police organization was seriously contested on the ground that the Assam Rifles being a central police organisation, it could not claim parity with Delhi Police organization, which was not a central paramilitary force.

6. Taking note of the admission on the part of the Union of India that there was disparity between the pay scales of the members of the Assam Rifles and similarly ranked personnel of other paramilitary forces, the High Court felt that it would be unreasonable and discriminatory if the pay scales given to Radio Mechanics in CRPF and BSF were denied to the Radio Mechanics in Assam Rifles, when the qualifications and service requirements in all the three organizations were identical. Consequently, the High Court issued the aforementioned directions, which are questioned in this appeal.

7. Mr. B. Dutta, learned Additional Solicitor General, appearing for the Union of India contended that the direction given by the High Court is manifestly contrary to the settled legal position, enunciated by this Court in several decisions that pay fixation is essentially an executive function, ordinarily undertaken by an expert body like the Pay Commission, whose recommendations are entitled to a great weight though not binding on the Government. It was argued that the recommendations of an expert body are not justiciable since the Court is not equipped to take upon

itself the task of job evaluation, which is a complex exercise. In support of the proposition, reliance is placed on two decisions of this Court in *S.C. Chandra & Ors. Vs. State of Jharkhand & Ors.* and *Union of India & Ors. Vs. Hiranmoy Sen & Ors.* .

8. Mr. Ranjit Kumar, learned senior counsel, appearing on behalf of the respondent, on the other hand, submitted that the petitioners having themselves admitted that there was an anomaly in the pay scales of the personnel of Assam Rifles, particularly, the Radio Mechanics, as compared to their counterparts in other paramilitary forces, the High Court was fully justified in giving the impugned directions. It was pointed out that, in fact, the Director General, Assam Rifles, who is one of the petitioners in the present appeal, had himself recommended to the Ministry of Home Affairs that the anomaly in the pay scales of the Radio Mechanics should be rectified. Learned counsel submits that it is unfair on the part of the Director General to take a somersault and oppose the direction given by the High Court which is in consonance with his recommendation. Learned counsel, however, stated that the respondent was not pressing for parity with the personnel of the Delhi Police.

9. The principle of equal pay for equal work has been considered, explained and applied in a catena of decisions of this Court. The doctrine of equal pay for equal work was originally propounded as part of the Directive Principles of the State Policy in Article 39(d) of the Constitution. In *Randhir Singh Vs. Union of India & Ors.* , a bench of three learned Judges of this Court had observed that principle of equal pay for equal work is not a mere demagogic slogan but a constitutional goal, capable of being attained through constitutional remedies and held that this principle had to be read under Article 14 and 16 of the Constitution. This decision was affirmed by a Constitution Bench of this Court in *D.S. Nakara & Ors. Vs. Union of India* . Thus, having regard to the constitutional mandate of equality and inhibition against discrimination in Article 14 and 16, in service jurisprudence, the doctrine of equal pay for equal work has assumed status of a fundamental right.

10. Initially, particularly in the early eighties, the said principle was being applied as an absolute rule but realizing its cascading effect on other cadres, in subsequent decisions of this Court, a note of caution was sounded that the principle of equal pay for equal work had no mathematical application in every case of similar work. It has been observed that equation of posts and equation of pay structure being complex matters are generally left to the Executive and expert bodies like the Pay Commission etc. It has been emphasized that a carefully evolved pay structure ought not to be ordinarily disturbed by the Court as it may upset the balance and cause avoidable ripples in other cadres as well. (Vide: *Secretary, Finance Department & Ors. Vs. West Bengal Registration Service Association & Ors.* and *State of Haryana & Anr. Vs. Haryana Civil Secretariat Personal Staff Association* . Nevertheless, it will not be correct to lay down as an absolute rule that merely because determination and granting of pay scales is the prerogative of the Executive, the Court has no jurisdiction to examine any pay structure and an aggrieved employee has no remedy if he is unjustly treated by arbitrary State action or inaction, except to go on knocking at the doors of the Executive or the Legislature, as is sought to be canvassed on behalf of the appellants. Undoubtedly, when there is no dispute with regard to the qualifications, duties and responsibilities of the persons holding identical posts or ranks but they are treated differently merely because they belong to different

departments or the basis for classification of posts is ex-facie irrational, arbitrary or unjust, it is open to the Court to intervene.

11. In *State Bank of India & Anr. Vs. M.R. Ganesh Babu & Ors.*, a three-Judge Bench of this Court, dealing with the same principle, opined that principle of equal pay is dependent upon the nature of work done. It cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility. The functions may be the same but the responsibilities do make a difference. It was held that the judgment of administrative authorities, concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court.

12. In *State of Haryana & Anr. Vs. Tilak Raj & Ors.*, it has been observed that the principle of equal pay for equal work is not always easy to apply as there are inherent difficulties in comparing and evaluating the work of different persons in different organizations or even in the same organisation. It has been reiterated that this is a concept which requires for its applicability, complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. It has been emphasized that the problem about equal pay cannot be translated into a mathematical formula.

13. Yet again in a recent decision in *State of Haryana & Ors. Vs. Charanjit Singh & Ors.*, a Bench of three learned Judges, while affirming the view taken by this Court in the cases of *State of Haryana & Ors. Vs. Jasmer Singh & Ors.*, *Tilak Raj (supra)*, *Orissa University of Agriculture & Technology & Anr. Vs. Manoj K. Mohanty* and *Government of W.B. Vs. Tarun Roy & Ors.* has reiterated that the doctrine of equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. Inter alia, observing that equal pay must be for equal work of equal value and that the principle of equal pay for equal work has no mathematical application in every case, it has been held that Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who are left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. Enumerating a number of factors which may not warrant application of the principle of equal pay for equal work, it has been held that since the said principle requires consideration of various dimensions of a given job, normally the applicability of this principle must be left to be evaluated and determined by an expert body and the Court should not interfere till it is satisfied that the necessary material on the basis whereof the claim is made is available on record with necessary proof and that there is equal work and equal quality and all other relevant factors are fulfilled.

14. Tested on the touchstone of the aforementioned broad guidelines and not cast-iron imperatives, we are of the opinion that in the present case, on the pleadings and the material placed on record by the parties in support of their respective stands, the High Court was justified in issuing the impugned directions.

15. Vide order dated 10th October, 1997 passed by the Ministry of Home Affairs in pursuance of para 7 of the Ministry of Finance, Department of Expenditure Resolution dated 30th September, 1997, it

was notified that the President was pleased to rationalize the rank structure and pay scales of non gazetted cadre of central police organizations and as a result of this exercise certain ranks were to be merged and the rank structure was communicated in the order along with the revised pay scales and replacement pay scales. Copy of this order was sent to all the paramilitary forces, including the Assam Rifles. On 22nd January, 1998, an office memorandum was issued by the Government of India, Ministry of Home Affairs, by way of a clarification. In the said letter, it was clarified that order dated 10th October, 1997 was equally applicable to all advertised categories. In the said letter, direction with regard to the re-designation of the three posts including Head Constable (RM) as ASI in central paramilitary forces along with their replacement pay scales were also ordered. It appears that the disparity in rank and pay in various central paramilitary forces could not be resolved and on 24th April, 2001, the Director General Assam Rifles submitted a report to the Government with regard to the progress on pay anomaly cases. Para 4 of the said letter is of some relevance to the issue at hand and it reads as follows:

Rank and pay of Technical Cadre Person RM. Ptmn, Pharma, and Compounder of AR with the same intake QR for remounts are given the rank of HAV wherein they are counterparts in CPOs are given ASI. The MHA had ordered to submit proposal in directing cadre to cadre comparison with BSF where the rank of ASI is available in other tech and also along with fin implication. The proposal alongwith fin implication has been submitted to MHA and the case is lying with MOF for approval.

16. Having failed to receive any positive response from the Government, one of the Radio Mechanics issued a Notice of Demand to the Ministry of Home Affairs and Director General of Assam Rifles, inter alia, praying for giving effect to office order dated 10th October, 1997 and office memorandum dated 22nd January, 1998. Vide order dated 26th December, 2001, the Ministry of Home Affairs informed the Director General of Assam Rifles that his proposal had been examined in consultation with Ministry of Finance and it was found that there was no point for comparison of grades and scales of pay for such posts across various central paramilitary forces. It was stated that the proposed upgradation may disturb relativities of various trades and grades within the Assam Rifles and there was no functional justification for upgrading these posts. It is evident that on rejection of the recommendation made by the Director General of the Force, the respondent herein was left with no option but to approach the High Court for redressal of his grievance.

17. As noted above, the writ petition was opposed by the petitioners herein by filing counter affidavit. For the sake of ready reference, the relevant portions in some of the paragraphs of the counter affidavit are extracted below:

That, with regards to the averments of the petitioner made in the writ petition in paragraph 5, I submit that Assam Rifles personnel were in receipt of pay and allowances on Army analogy with various groups in terms of Group A , B , C , D , & E to conform to their functional qualitative requirements of these groups which had varying pay scales. I submit that on the recommendation of the fourth pay commission w.e.f. 01.01.1986 for Force had been granted and pay and allowance entirely on the lines of Central Para Military Forces while no change in the rank

structure was carried out and this difference in rank structure has resulted in an apparent disparity in their service conditions and certain category of personnel who were placed in the erstwhile higher groups including radio mechanics category have also been deprived of pay scales either at par with their counterparts in the Army or in the Central Police Organisation.

That, with regard to the averments of the petitioner made in the writ petition in paragraph 8, I beg to reiterate that Assam Rifles personnel were in receipt of pay and allowances on Army analogy with various groups in terms of group B , C , D , and E , to conform to their functional and qualitative requirements of these groups which had varying pay scales in diminishing order. On the recommendation of the Fourth Pay Commission w.e.f. 1st January, 1986 the Force had been granted pay and allowances entirely on the lines of Central Para Military forces shortly called as CPMFs while no change in the rank structure was carried out, and this difference in the rank structure has resulted in an apparent disparity in their service condition.

.. ..

That, with regards to the averments of the petitioner made in the writ petition in paragraphs 10 to 13, I beg to submit that on receipt of MHA letter No.27011/1103/97-PF.1/56 dated 22nd January, 1998, Assam Rifles Directorate by letter No.A/Pers/5th CPC/Vol.III/98 dated 18th February, 1998 had taken up a case with HA to redesignate Hav/RM- Gde I & II of Assam Rifles as Warrant Officer and for replacement of pay scale of Rs.4000-1000-6000/- to bring them at par with their counterparts in other Central Police Organisation. I submit that attention of MHA was also drawn regarding placement of Hav/RM Gde I and II in the lower scale of pay consequent to implementation of IV Pay Commission. In reply to the Assam Rifles Directorate letter the MHA had ruled out vide their letter No.27011/103/97-P.F.1 dated 3rd March, 1998 that Assam Rifles can redesignate HC (RM) as Warrant Officer if pre-revised and revised pay scale of Hav(RM) in Assam Rifles are identical to the pay scale of HC(RM) in BSF and CRPF. I submit that the main hurdle in implementing the said order in Assam Rifles is that there is disparity in pay scales of RM in Assam Rifles to that of BSF and CRPF. The Hav(RM) of Assam Rifles were drawing pay scales of Rs.975- 1660/- w.e.f. 1st January, 1986 and replacement scale as given in the 5th Central Pay Commission is Rs.3200- 4900/- per month whereas in CRPF and BSF the Hav (RM) was drawing pay scale of Rs.1200-30-1560-40-2040/- per month whose replacement scale in the 5th Central Pay Commission is Rs.4000-100- 6000/-. It is also pertinent to clarify here that the qualification of HC(RM) in other Central Police Organisations that of Assam Rifles Hav (RM) is almost par

As per averment made in Para 13 of the writ petition, the petitioner is seeking higher pay scale viz 5000-150-8000/- admissible to Delhi Police personnel. I submit that since the Assam Rifles is at par with other central police organization, the demand of the petitioner, for parity with an entirely another department is not

possible. In view of the facts narrated above and to bring parity with other central police organization, it is proposed to grant warrant officers rank (Equivalent to Assistant Sub Inspector) to technical categories including radio mechanics vide Assam Rifles Directorate Letter No.A/Pers/45th CPC/Vol III/98/77 dated 6th April, 1998 and subsequent queries sought by the MHA has been replied. I submit that MHA has also informed to the LOAR (Liaison Office, Assam Rifles) that the case for introduction of Warrant Officers rank to technical categories is presently lying with Ministry of Finance (E-III) since 29th August, 2000. (Emphasis supplied)

18. From the afore-extracted paragraphs of the counter affidavit and the resume of correspondence referred to above, it clearly stands admitted by the petitioners herein that: (i) all the paramilitary forces, including Assam Rifles are at par with each other and (ii) there was apparent disparity in the pay scales of the personnel of Assam Rifles with their counterparts in other central paramilitary forces. In order to rectify this disparity, Director General Assam Rifles, petitioner No.2 herein, vide his letter dated 18th February, 1998 had, in fact, taken up the grievance of the respondent with the Ministry of Home Affairs, inter alia recommending re-designation of Havildar (RM) Gd.-I and II of Assam Rifles as Warrant Officer and for replacement of pay scale of Rs.4000-100-6000 to bring them at par with their counterparts in other central police organization. However, the Ministry of Home Affairs vide letter dated 3rd March, 1998 while accepting the said proposal had recommended re-designation of HAV/RM as Warrant Officer but subject to the condition that the pre-revised and revised pay scales of HAV/RM in other paramilitary forces were identical to the pay scales of Head Constable (RM) in CRFP and BSF. Manifestly, in the instant case, the differentiation in the pay scales of the two paramilitary forces is sought to be achieved not on the ground of dissimilarity of academic qualification or the nature of duties and responsibilities but only on the ground that there was initial anomaly in the Fourth Central Pay Commission Report. The counter affidavit does not even attempt to explain how the case of the HAV/RM in Assam Rifles is different from that of Radio Mechanics in other central paramilitary forces.

19. In the present case, therefore, in the light of the admitted factual position, the question of examination of external comparisons, internal relativities and other factors, to be kept in view for job evaluation, considered to be a complex issue to be studied only by expert bodies, does not arise. As a necessary corollary, the issue as to whether there is a complete or wholesale identity between the said paramilitary forces, does not survive for consideration.

20. Thus, the short question requiring our consideration is whether having admitted in their affidavit referred to hereinabove, the apparent disparity and anomaly in the pay scales of Radio Mechanics, the administrative authorities, the petitioners herein, could be permitted to perpetuate apparent discriminatory differentiation in the pay scales because of the disparity in pre-revised and revised scales of the personnel of Assam Rifles prior to the recommendations of the Fourth Pay Commission, irrespective of the identity of their powers, duties and responsibilities with other paramilitary forces. In our considered opinion, in view of the total absence of any plea on the part of the Union of India that Radio Mechanics in other paramilitary forces were performing different or more onerous duties as compared to the Radio Mechanics in Assam Rifles, the impugned decision of the Government was clearly irrational and arbitrary and thus, violative of

Article 14 of the Constitution.

21. On a conspectus of the factual scenario noted above, we do not find any infirmity in the impugned directions given by the High Court, warranting interference. There is no merit in this appeal and it is dismissed accordingly with costs.