

Union Of India vs Arun Jyoti Kundu & Ors on 27 August, 2007

Equivalent citations: 2007 AIR SCW 6227, 2007 (7) SCC 472, AIR 2007 SC (SUPP) 968, (2007) 10 SCALE 368, (2007) 6 SUPREME 78, (2007) 6 ALLMR 412 (SC), (2007) 4 SCT 389, (2008) 1 SERVLJ 424, (2007) 58 ALLINDCAS 194 (SC)

Author: P.K. Balasubramanyan

Bench: H.K. Sema, P.K. Balasubramanyan

CASE NO.:

Appeal (civil) 2468-2469 of 2005

PETITIONER:

UNION OF INDIA

RESPONDENT:

ARUN JYOTI KUNDU & ORS

DATE OF JUDGMENT: 27/08/2007

BENCH:

H.K. SEMA & P.K. BALASUBRAMANYAN

JUDGMENT:

J U D G M E N T P.K. BALASUBRAMANYAN, J.

Intervention allowed. Heard learned counsel on all sides.

1. These appeals by the Union of India challenge the decision of the High Court of Calcutta dismissing the writ petitions filed by it challenging the decision of the Central Administrative Tribunal, Calcutta Bench, in applications filed by employees of Railways in typist cadre. The claim of the employees was for the issue of a direction to the appellant to sanction the same scales of pay to them as are applicable to senior clerks, head clerks and Office Superintendents Grade II with effect from 1.1.1996 and for directing payment of the arrears on that basis. The Central Administrative Tribunal had upheld that claim. That was challenged in the High Court, but the High Court repulsed the challenge.

2. Claim before the Tribunal was made on the basis that the scales of pay of the respondents herein, working as typists in the Eastern Railways is at par with that of Lower Division Clerks. The Fifth Pay Commission had recommended that typists should be treated at par with clerks and hence the typists have a legitimate right to claim pay at scales enjoyed by Senior Clerks, Head Clerks and Overseers Grade II in respect of the posts of Senior Typists, Head Typists and daily typists respectively. Instead of implementing the recommendations of the Fifth Pay Commission, the

appellants have fixed the pay of the respondents at lower scale. When typists were at par with the ministerial staff in the matter of promotion, there was no justification for not treating Senior Typist, Head Typist and the Chief Typist at par with Senior Clerk, Head Clerk and Overseer Grade II. The claim was opposed by the Union of India by pointing out that the recommendations of the Fifth Pay Commission regarding pay had been duly implemented to the extent accepted but that the cadre of typists had not been merged in the cadre of clerks. When a grievance was put forward, the question was examined by the Anomaly Committee and in respect of English Typists and Hindi Language Typists, relief was granted with effect from 31.1.2000 that it was not within the purview of the Central Administrative Tribunal to re-fix the pay scales or to issue directions to merge the cadre as sought for by the respondents and that the applications were liable to be dismissed.

3. The Central Administrative Tribunal brushed aside the objections of the Union of India regarding its jurisdiction, its authority to issue a direction to merge the cadres and the propriety in its undertaking the fixation of pay scales in the light of the decisions of this Court and proceeded to grant relief to the respondents by directing that the English language and Hindi language typists be given the same pay scales as applicable to Senior Clerks, Head Clerks and Office Superintendents with effect from 1.1.1996 and that the arrears be paid on that basis within the time fixed. The Tribunal in O.A. 12 of 1999 also directed the appellants to give the benefit of the same scales to all typists as are applicable to Senior Clerks, Head Clerks, Office Superintendents Grade II as contained in the order dated 16.10.1997 with effect from 1.1.1996. Feeling aggrieved by these directions, the Union of India filed the writ petitions before the Calcutta High Court reiterating its contentions. The Division Bench overruled the contentions of the Union of India and dismissed the writ petitions. The Union of India has thereupon come up with these appeals by special leave.

4. The Fifth Central Pay Commission had gone into the pay scales of various categories of employees in the Railways also. The Pay Commission had generally recommended equivalent revised scales of pay for the existing scales of pay except where it had thought it necessary to effect improvement on the basis of recruitment qualifications, nature of work and so on. On the recommendations of the Fifth Pay Commission the Government of India had revised the scales of pay of its employees with effect from 1.1.1996. When certain organizations of employees made complaints of alleged anomalies in the revised pay scales, the Government of India had constituted Anomalies Committees at the national and departmental levels. The typists in the Railways had also complained of certain anomalies and those grievances were considered by the Departmental Anomalies Committee. On the basis of the report of the Anomalies Committee, typists in English and Hindi language were given relief but with effect from 31.1.2000. It is being dissatisfied with this that the typists approached the Central Administrative Tribunal, Calcutta.

5. According to the Union of India, the Railway establishment has been separately dealt with by the Fifth Central Pay Commission which had made specific recommendations for the cadre of ministerial staff of Railways. They are contained in paragraph 83.225 of the Report. It is the further case of the Union of India that the Pay Commission had not made any specific recommendation for the category of typists in Railways while dealing with them. Under paragraph 83.296 of its Report, the Pay Commission has stated that all posts in Organizations other than those specifically discussed are in standard scales of pay and they may be placed in corresponding replacement scales of pay.

Therefore, based on that recommendation typists in the Railways have been allowed standard replacement pay scales.

6. Learned Senior Counsel appearing on behalf of the appellant contended that the cadre of typists and the cadre of clerks in the Railways are distinct with distinct duties. A conscious decision was taken not to merge the two cadres. A limited decision was taken to reduce the number of posts on the lowest rung at the typist cadre and the posts so reduced were to correspondingly increase the strength of the cadre of clerks. The decision was that there was to be no merger. The Fifth Pay Commission, while dealing with the Ministry of Railways had dealt with its clerical staff at paragraph 83.220 and 83.225. In paragraph 83.220 the Pay Commission dealt with the pay structure of the Ministerial Staff of Railways, subordinate staff and recommended the various pay scales. In paragraph 83.225 it dealt with the Ministerial Staff and officers other than subordinate officers and recommended a pay structure for them. In paragraph 83.296 it was recommended that all posts in organizations under the Ministry other than those specifically discussed by the Pay Commission in the concerned Chapter are in standard scales of pay and they may be placed in the corresponding replacement scales of pay recommended by it. According to the appellant all the relevant aspects were taken note of by the expert body, the Fifth Pay Commission and it had dealt separately with the Ministry of Railways. But it has deliberately chosen not to comment on the pay structure of the different hierarchies of typists and had left their pay scales to be determined in terms of the standard scales of pay as provided in paragraph 83.296. It is, therefore, the submission on behalf of the appellant that the Commission had taken a conscious decision to deal differently with the cadre of typists and the cadre of clerks and hence the typists cannot claim the benefits which were not given to them by the Fifth Pay Commission. The fact that they were enjoying the same pay scales before the Fifth Pay Commission's recommendations would not make any difference in the light of the recommendations of the Fifth Pay Commission. If parity, as claimed is to be given, it would amount re-writing the report of the Pay Commission. The Central Administrative Tribunal and the High Court had done this by granting the reliefs claimed and consequently they have acted outside their jurisdiction while exercising the power of judicial review. A mandamus has been issued to merge the cadre so to say; that is not permissible. It is pointed out that the peculiar facts of the services in the Railways had been specifically taken note of by the Fifth Pay Commission and the Commission had observed that they had considered the pay structure of ministerial staff for the Railways in the context of all pattern of subordinate officers and pay structure in different railway categories and pay structure of different categories where graduates were inducted into the cadre. It was also submitted that a conscious decision was taken with a view to grant higher pay scale because one third of the strength of senior clerks was that of directly recruited graduates and a higher pay scale has been given to them on the basis of educational qualifications. The recommendation in paragraph 83.296 was also made by the Commission based on its appreciation of all the relevant circumstances relating the service in Railways.

7. It is contended on behalf of the respondents and interveners that the Fifth Pay Commission had found that 26 categories of employees were common in various ministries and organizations under the Government and they are listed in the Report. The matter of fixation of pay scales in respect of those 26 common categories like accountant and typists etc. were considered in Chapter 55. In respect of language typists the Pay Commission had recommended that language typists can be

divided into four categories, typists in English language typists, Hindi language typists, typists in Indian languages other than Hindi and English and typists in foreign languages. Typists in English and Hindi language form part of the general cadre of an organisation. They are treated at par in the matter of pay scales, promotional avenues etc. as per paragraph 55.152 of the Report. It is the further contention that the recommendations in respect of pay scales for clerical cadre in the Railways is contained in paragraph 83.225 and after considering the relevant aspects, a pay structure for the Ministerial staff was specifically recommended. In paragraph 83.295 it was stated that recommendations of common categories like EDP staff, typing staff, official language and canteen staff had been made in the Chapter on common categories. It is, therefore, the case of the respondents that on a combined reading of the above paragraphs it can be seen that the language typists are entitled to the same pay scales as have been recommended by the Fifth Pay Commission in respect of the clerical cadre. No separate recommendation was made in view of the fact that the matter was specifically covered under the common categories. It is the submission on behalf of the respondents that paragraph 83.296 does not have application because that dealt only with the categories of employees whose cases have not been dealt with either under common categories in Chapter 55 or under specific categories in paragraph 83.1 to 83.295.

8. In answer, it is pointed out on behalf of the appellant that paragraph 83.295 has no relevance. Paragraph 55.152 relied on was only a recommendation with regard to typists in the pay scale of Rs.950-1500 and this was clear from the statement as such we recommend that the posts of language typists be merged with the clerical cadres of the respective organizations/central graduates clerical, service in the case of central graduates in the pay scale of Rs.950-1500. This will ensure adequate promotional opportunities for those typists. It is also pointed out that paragraph 55.154 dealt with official language typists and it was noticed that the posts were very few and there was scarcity of staffs. Since the candidates are required to possess higher qualifications it was recommended that they should form a separate and distinct category entitled to better remuneration. It was, therefore, recommended that direct entry in their case may be made in the pay scale of Rs.1320-2040. According to the appellant, from the above it is apparent that the specific recommendation was with regard to language typists in the pay scale of Rs.950-1500, there was a specific recommendation to merge them with the clerical staff of respective organizations, there was no recommendation vis-à-vis typists in other pay scales in paragraph 55.154 which dealt with the higher qualification and, therefore, it is a case where paragraph 83.296 squarely applies and all that the typists are entitled to are corresponding replacement pay scales recommended by the Fifth Pay Commission. We find considerable force in the contention of learned counsel for the appellant that the plea that categories other than categories of Rs.950-1500 are also required to be merged or are required to be given the same treatment is not borne out and that the recommendation is limited to the language typists in the scale of Rs.950-1500. When there is a specific chapter dealing with the Ministry of Railways, the general recommendation regarding typists in the limited pay scale of Rs.950-1500 could not straight away be made applicable to other pay scales and even if there was any recommendation for merger, so long as the same has not been accepted it may not be appropriate for the tribunal or the court to issue a direction in that regard.

9. We had recently held in K. S. Krishnaswamy Vs. Union of India & Anr. [JT 2006 (10) 479] that the recommendations of Pay Commissions are subject to acceptance or rejection. Speaking for the

Bench, one of us (H.K. Sema, J.) stated:

It is well settled principle of law that recommendations of the Pay Commission are subject to the acceptance/rejection with modifications of the appropriate Government. So, unless the Government has accepted the recommendation to merge the cadres, the Court cannot proceed on the basis of the recommendation alone or to direct the Government to accept the recommendation. In this context we have also to take note of the decisions of this Court in *Dev Kumar Mukherjee* (1995 Suppl. (2) SCC 640) that the recommendations of pay scales are not open to judicial review and the one in *State of Uttar Pradesh vs. Ministerial Karamchahi Sangh* (1998 (1) SCC 422) to the effect that the evaluation of typists for the purposes of pay scales must be left to the expert body. The role of the Pay Commission and that of the court has also been dealt by the decision of this Court in *Saurabh Chaudhri and others vs. Union of India and others* (2003 (9) SCALE 272) and *M.P. Rural Agricultural Officer Association vs. State of M.P.* (2004 (4) SCC 646). In the latter decision it was held by this Court that pay commissions are constituted for evaluating duties and functions of the employees and the nature thereof vis-à-vis the educational qualifications therefor. Although the pay commission is an expert body, the State in its wisdom and in furtherance of its valid policy may or may not accept its recommendations.

10. On going through the relevant paragraphs of the Report of the Fifth Pay Commission in the light of the arguments raised before us, we are of the view that as far as the staff in the Railways is concerned, for whom no specific provisions have been made, it would be paragraph 83.296 that would apply and if it is so, the pay scale of the typists not specifically dealt with would be corresponding replacement scale of pay. The specific direction in paragraph 55.152 relied on by the respondents applies only to typists in the scale of pay in Rs.950-1500 or it is confined to that category only and the same cannot be extended and paragraph 83.295 invoked to rope in others not fitting in with that category.

11. Though the tribunal noticed the decision in *State of U.P. and others vs. J.P. Chaurasia and others* (1989 (1) SCC 121), it has proceeded on the footing that since the Commission had recommended that the posts of language typists be merged with the clerical cadre even though that has not been done, a direction still could be issued for grant of benefits of the same pay scales as are applicable to the senior clerks, head clerks and office superintendents Grade II, to the respondents with effect from 1.1.1996. In this context, the tribunal has also relied on the fact that on the recommendation of the Anomalies Committee the appellants have accepted the demand of two sets of typists for grant of higher set of pay scale equivalent to their counter parts in the clerical cadre. It has held that on the same analogy there cannot be any justification to deny benefits to typists as a whole.

12. We are afraid that the tribunal has exceeded its jurisdiction in issuing the direction, it has issued. The fact that notwithstanding the Fifth Pay Commission not recommending, particularly, the payment of higher scale to two sets of typists, typists in English language and typists in Hindi language, the Government chose to give them relief with effect from 31.1.2000 would not justify an inference of discrimination or a finding that the authority has acted arbitrarily or unreasonably. As

this Court has clarified in the decisions adverted to, it is for the Government to act on the report of the Pay Commission or either to accept or not to accept its recommendation. Once the recommendations of the pay commission are accepted, in full, it could also give effect to it from the date recommended in that behalf. But when admittedly no provision was made in respect of the English and Hindi typists and they pointed to the anomalies and the Government on the basis of the recommendation of the Anomalies Committees decided to give them the scale with effect from 31.1.2000, it could not be held to be discriminatory or to be beyond the power of the Government. When a concession was being extended as distinct from implementing a specific recommendation of the Pay Commission with reference to a particular point of time, it is open to the Government to provide that the benefit it proposes to give, would be available only from a notified date. As this Court has observed, neither the Central Administrative Tribunal nor the High Court, can direct the merger of any cadre. That is a policy decision for the Government to take. So long as it is not done, it is not open to the tribunal or the court to issue directions in that regard and to follow it up with what are thought to be consequential directions.

13. We may in this context notice that the Central Administrative Tribunal, Principal Bench, Delhi dealing with a similar claim took up the position on the basis of decisions of this Court, that the tribunal would have no jurisdiction to issue the directions sought for by the employees. It is submitted that the correctness of the said decision has been questioned in the High Court at Delhi. Therefore, it is not necessary for us to make any observation regarding that decision. But we note that, that tribunal declined jurisdiction in similar circumstances.

14. Once we find that it was open to the Government to extend a benefit to a set of its employees with effect from a particular day on the basis of some anomaly found in the report of the Fifth Pay Commission, there would arise no discrimination because the very implementation of the Fifth Pay Commission Report would not entitle the respondents to any benefit. The very right to their benefit arose because of the decision of the Government to extend to them a particular benefit not specified in the Fifth Pay Commission Report. It is, therefore, not possible to postulate that the decision of the Government must be given retrospective effect and if no such effect is given, the tribunal or court can interfere and direct the giving of such retrospective effect. Once it is found that paragraph 83.296 is attracted to the case, it has to be found that the applicants before the Tribunal were not entitled to any relief.

15. We are, therefore, of the view that the Central Administrative Tribunal has exceeded its jurisdiction in issuing the directions it has issued and the High Court was in error in not setting them aside. We, therefore, allow these appeals and setting aside the decision of the High Court and that of the Central Administrative Tribunal dismiss the original applications filed before the Central Administrative Tribunal, Calcutta. We direct the parties to suffer their respective costs.