Union Of India & Ors vs Shri Ram Gopal Agarwal & Ors on 15 January, 1998

Equivalent citations: 1998 ADSC 1 308, AIR 1998 SUPREME COURT 783, 1998 (2) SCC 589, 1998 AIR SCW 499, 1998 (1) SCALE 108, 1998 (1) ADSC 308, (1998) 1 JT 126 (SC), 1998 (1) UPLBEC 493, (1998) 3 SERVLJ 40, 1998 (1) JT 126, (1998) 78 FACLR 555, (1998) 2 LAB LN 379, (1998) 2 SCT 540, (1998) 1 SERVLR 463, (1998) 1 UPLBEC 493, (1998) 3 SUPREME 567, (1998) 1 SCALE 108, (1998) 2 ALL WC 1106, 1998 SCC (L&S) 706, (1998) 1 LABLJ 1233

Bench: K. Venkataswami, A.P. Misra

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
SHRI RAM GOPAL AGARWAL & ORS

DATE OF JUDGMENT: 15/01/1998

BENCH:
K. VENKATASWAMI, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

With (C.A Nos. 148/98 & of 1998) (SLP (C) 885/98) (Arising out of C.C.No 20506 of 1993/ S.L.P.(c) No. 502-503 of 1996) J U D G M E N T Misra, J.

Delay condoned in C.C. No. 20506.

Special leave granted.

The Civil Appeal No. 4368 of 1991 is filed against the order dated March 30, 1990 passed by the Central Administrative Tribunal, Gauhati Bench, Bench, Gauhati, by virtue of which the order contained in letter No. R-IV 1/87 Orp/CRPF/EP-IV dated February 24, 1989 was quashed. Civil Appeal arising out of S.L.P. (C) No..... of (993 (O.C.20506/93) arises out of order dated October 01.1992, allowing the application by the respondents claiming enhancement of the allowance, directing the appellant to pay 50 per cent of the amount in terms of the judgment of the Gauhati Bench in the (O.A No. 17 of 1988 dated 30.3.1990 as aforesaid. The main matter is still pending before the Tribunal to be listed after disposal of the present appeals. The C.As. arising out of Special leave petition Nos, 502- 503/96 are directed against the order of the same Tribunal by which if finally disposed of the matter with a direction to the appellant to pay 50 per cent of the ration allowance to the non-gazetted non-combatised staff also which shall be subject to the further orders to be passed by this Court.

The only question involved in all the aforesaid appeals is whether non-gazetted non-combatised staff when posted in static area that is to say non-operational area, is entitled for ration allowance or not?

The brief facts are, the concerned respondents are the members of the hospital staff working in the Central Reserve Police Force. It Based Hospital, Hyderabad. The contention of these respondents before the aforesaid tribunal and before us was that they were unfairly denied the benefit of grant of ration money, which is available to combatised non- gazetted persons of the same force. Hence the contention was to direct the Union of India to grant them ration money on par with the said staff who are working on identical terms and conditions as applicable to the aforesaid combatised non-gazetted person. The appellants have refuted this claim. The case is that non-gazetted persons of Central Reserve Police Force including ministerial staff were sanctioned ration money when they were working in operational areas. The said concession was extended top the members of the Central Reserve Police Force at a higher rate where the force is deployed on internal security duties. Further, this ration money at the rate of Rs. 250/- per month was for combatised persons (non-operational areas) also. This concession was no admissible to the ministerial and non- gazetted staff who were no combatised. The services of these concerned respondents are governed by the Central Civil Services Rules and other such rules as framed from time to time by the Union of India under Article 309 of the Constitution while the other category of the employees, namely, combatised personnel are governed by the Central Reserve Police Force Act. It is not in dispute that the respondents are non-combatised members of the force. The further case of the appellants is that this provision of ration money allowance was provided in the statute for the combatised forces as they were working mostly on the operational sensitive areas. It is on these reasons a distinct classification was made by the Government to provide allowance to one and not to others. The Ministry of Home Affairs for the first time on 15th July, 1968 introduced this scheme by granting an allowance of Rs 42/- per month to the non-gazetted personnel; including ministerial and hospital staff of the Central Reserve Police Force working in certain operational areas. This amount was subsequently raised from time to time. Later in 1975 the allowances were graded in two operational areas like the State fo Assam, Tripura, Mizoram, Meghalaya, Nagaland, Manipur etc. In the said areas the allowances were payable at the rate of Rs 74/- whereas in West Bengal, except Darjeeling District, the ration allowance was Rs. 48/-. By another Circular dated 20th July, 1979 this was increased to Rs.100/- in

qualifying areas. It is also not in dispute that the ministerial staff and the hospital staff in Central Reserve Police Force are the civilian staff governed by C.C.S. Rules. On 20th February, 1981, the Government of India Ministry of Home Affairs vide its letter No. O-IV- 56/72 (Admn) P.P.IV converted the civilian posts of non- gazetted ministerial staff into combatised staff. The civilian and hospital off staff were given option to choose combatised or not. According to the scheme, who volunteered for the combatisation would be given equivalent rank of the force, and after combitisation would be governed by the C.R.P.F. Act and Rules. The concerned respondents did not opt for combatised staff and remained in the civilian posts. That after IVth Pay Commission recommendations some major changes were made and all the combatised civilian staff were also recommended for all the benefits as to the Central Reserve Police Force Personnel. However, as per the recommendations of the 6th October, 1987 Sanctioned the ration money only to the non-gazetted combatised personnel and the personnel who have not opted were not entitled for the same. All the personnel who have opted for combatisation were governed by Central Reserve Police Force Act and Rules.

By Government letter dated 6th October, 1987, the non- gazetted staff who were not combatised including those working in operational area ceased to draw ration money which they (those working in operational area) were drawing all along since year 1968. However, with a view to restore the facility of ration money to the aforesaid categories of staff a proposal was sent to the Government recommending grant of ration money to such staff who were drawing prior to the said letter viz, those working in operational area. On 24th February, 1989, after considering the proposal the Government of India while filling counter affidavit to the application moved by the respondents before the said tribunal, stated that this relief of the applicant has now become infructuous in view of the Government decision and subsequent order dated 24th February, 1989 as the ration allowance was restored to such concerned respondents, who were working in the operational areas, which they were drawing earlier.

Thus, after this the only grievance that remains to be adjudicated is whether the aggrieved respondents, who have not opted for combatisation, should also be paid ration money allowance even in static areas that is to say not working in sensitive by operational areas. The tribunal, however, quashed the aforesaid letter dated 24th February, 1989 of the Government which restricted the grant of such allowance only to the combatised force.

The tribunal allowed the relief as claimed by the concerned respondents primarily on the principle of "equal pay for equal work". In support of this decision, learned counsel appearing for the concerned respondents referred to the dismissal of the S.L.P. (C) No..../92 (C.C 18847) on 24.1.1996 against the tribunal order which is similar to the present case. We find that this Special leave petition was dismissed solely on the ground of delay and not on merits. Another preference was made of S.L.P. (C) No. 9605/90 which is also dismissed by this Court and the order of the tribunal was affirmed. We have perused the same. This is a case of members of nursing staff of various hospitals, CRPF, Gauhati. The petitioners were drawing uniform and washing allowance at the rate of Rs. 200/- per annum and their grievance was that though the rates of uniform and washing allowance etc, have been enhanced in respect of nursing staff of other hospitals in the Ministry of Health and Family Welfare yet no such enhanced rate was mead admissible tot he petitioners for

which representations were made. The tribunal in that case relied on office Memorandum dated 4.1.1999 issued by the Government of India. Ministry of Health and family Welfare, relating to the subject revision of rates of various allowances admissible to the nursing personnel in the Central Government. The contention for the petitioners was denial of enhanced rate of allowance to the petitioners who were nurses attached to CRPF hospital discharging the same nature of work as that of nursing staff attached to any other hospital under the Ministry of Health and Family Welfare, is violative of Articles 14 and 16 of the Constitution of India. The Court found after looking into the nature of the duties of the petitioners and the nursing staff of the Government hospitals are being one and relying of AIR 1982 Supreme Court 879 Randhir Singh Vs. Union of India & Ors. held, this is the case covered by the principle of "equal pay for equal work". However, facts in the present case are different.

The present case would not fall under the same category in order to test he principle of "equal pay for equal work". The nature of work, the sphere of work duration of work and other special circumstances, if any attached to the performance of the duties have also to be taken into consideration. The principle of "equal pay for equal work"

> is well settled but to arrive at the conclusion the facts of each case has to be scrutinised with precision. In the present case, it cannot be disputed that the staff working on the operational and sensitive areas including internal internal security have to perform arduous duties in comparison to the civilian staff working in CRPF who are not on the operation or such areas. It is keeping this in view first a classification and distinction is drawn inter se between the two classes that when performing duties on such operation and sensitive areas the grant of ration money allowance is made admissible to both but the same is not made admissible to the concerned respondents not working on such operation areas etc. Learned counsel for the respondents argued with vehemance that even earlier such staff who were non-combatised when became combatised were granted the allowance while performing duties on non- operational areas like the earlier combatised staff but the same civilian staff who did not opt for combatisation were excluded from ration money allowance which is discriminatory in nature.
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> We have heard learned counsel for the parties and we find that there is clear distinction in the terms and conditions of service, the nature of work and even tenure of service inter se between combatised and non-combatised personnels. The combatised personnel retire at the age of 53 while the non-combatised personnel retire at the age of 55. The nature of work, so far as combatised personnel are concerned, are arduous in nature in the operational and sensitive areas. In fact even the non-combatised personnel while working in that operational areas and such sensitive, places are granted the ration allowances. It is only when they are working in `static areas there is no provision for this allowance. Even therms and conditions, service conditions are totally different. The combatised personnels are governed by Central Reserve Police Force Act and Rules which is an army rule more stringent in nature while non- combatised staff is governed by the civilian law, namely, C.C.S.

Rules made by the Government of India under Article 309 of the Constitution. The question of discrimination in the matter of allowances has to be listed differently even inter se between those falling under classs of "equal pay for equal work". In cases where some performing overtime duties, night duties, duties in hazardous places viz, mountain, terrain at heights or at sensitive borde areas an additional allowance is made applicable for the nature of work they perform. Similarly, when option is given it is with clear intention of there being plus and minus points in the two categories. That by itself differentiates inter se between the tow. Once not option to enjoy the benefit as in the present case, to continue in service of one category upto larger length of service (55 years) and not to involve in the hazardous nature of duties with stringent service conditions cannot come forward to claim and benefit of the other category also on the ground of discrimination. In fact, treating unequal to be equal itself would be discriminatory, Thus, we conclude it is neither a case of "equal pay for equal work" nor a case of discrimination or violation of Articles 14 and 16 of the Constitution of India.

In fact this distinction is being drawn on the basis of the report of the IVth Central Pay Commission submitted, which is an expert body in this regard. It is not possible for this Court, on the basis of the affidavits filed, to come to a clear conclusion specially in contradiction to the expert body report such as IVth Central Pay Commission Report, to hold it arbitrary unless there is cogent facts and reasons brought before us, which is not in the present case. In 1989 Vol. I SCC 120 this Court observed as follows:

"The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work of volume of work done by Bench Secretaries, Primarily it requires among other, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be th e same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same but the quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government.

It must be determined by expert, bodies like Pay Commission. They would be the best judge to evaluate the nature of duties and responsibilities or posts. It there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration".

We find in the present case also the IVth Central Pay Commission making a distinction between the two classes while recommending the ration allowance to combatised staff personnel a nd denying to non-combatised staff personnel for the

specified area.

We do not find anything on the report to deviate from the said option and for the reasons also to hold the same to be discriminatory or violative of Articles 14 and 16 of the Constitution of India. For the aforesaid reasons, the impugned orders dated 30.9.90. 1.10.92 and 23.8.94 by the Tribunal are n ot sustainable.

It is further argued for the concerned respondents that during the pendency of the present Civil Appeal No. 436/91 (arising out of SLP (C) No. 15728/90, pursuant to be order passed by this Court, 50 per cent of the said allowance was paid b y the appellant to the respondents and similarly by means of interim order in C.A. arising out of SLP (C).....(C.C. 20506/93), the tribunal directed to pay this 50 per cent allowance and in C.Ss. arising out of SLP (C) No. 502-503/96 also the tribunal finally disposed of the appeal in the same terms of paying 50 per cent of allowance to them subject to decision of this court in pending appeal.

The contention is that in case this appeal is allowed the recovery will be pressed against the concerned respondents for the amount already paid and it would result in great hardship. We make it clear that the amount already paid to them in terms of the order of this Court of by the tribunal as aforesaid would no be recovered.

Hence for these reasons we are clearly of the opinion that the claim of the concerned respondents is not sustainable and the learned tribunal fell into an error by equating both classes under the principle of "equal pay for equal work".

Hence, we set aside the judgment and orders of the aforesaid tribunal dated 30.3.90, 1.10.92 and 23.8.94 passed in the aforesaid three appeals and uphold the order contained in the aforesaid letter dated 24th February, 1989. Accordingly, all the aforesaid appeals stand allowed in terms of the orders passed above. Cost on the parties.