

PETITIONER:
UNION OF INDIA AND OTHERS

Vs.

RESPONDENT:
PRADIP KUMAR DEY

DATE OF JUDGMENT: 09/11/2000

BENCH:
Shivaraj V. Patil

JUDGMENT:

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J U D G M E N T

Shivaraj V. Patil

This appeal is filed assailing the judgment and order dated 23.12.1992, passed by the High Court of Calcutta in Civil Appeal No. 659 of 1989. The respondent herein filed a writ petition seeking a writ of mandamus directing the appellants to proceed on the basis of the recommendations presented to the Fourth Pay Commission by Central Reserve Police Force (CRPF) in order to remove disparity in the pay scales of Naik (Radio Operator) and an employee discharging similar nature of duties in Directorate of Coordination Police Wireless and other Central Government agencies on the ground that the duties performed by the respondent as Naik (Radio Operator) were more hazardous than the duties performed by personnel with similar qualifications and experience in State services and other organizations. The respondent made his claim on the principle of equal pay for equal work. The appellants contested the writ petition by filing a detailed counter contending that the recommendations of the Fourth Pay Commission had been implemented by the CRPF in all respects and that the respondent was not discriminated; the Fourth Pay Commission had gone deep into various aspects of the pay structure of various categories of the employees of the Central Government and the claim of the respondent on the principle of equal pay for equal work was not tenable having regard to various distinguishable factors. The learned single Judge by his order dated 28.9.1989 dismissed the writ petition stating that the respondent was appointed as a constable and was promoted as Naik and he could not equate himself with the pay scale of Assistant Sub-Inspector of Police; the Pay Commission Report shows that all Naiks of all Central police establishments including CRPF have been given the same pay scale. The respondent took up the matter in appeal before the Division Bench of the High Court in C.A. No. 659 of 1989. The said appeal was allowed directing the appellants to fix up the pay of the respondent at Rs.1320-2040 and to revise the same if the same pay scale has since been revised in order to remove the disparity. Hence this appeal. The learned senior counsel for the appellants urged (1) Fourth Pay Commission recommendation had been implemented in letter and spirit and the respondent

was not at all discriminated; (2) the job of radio operator in CRPF could not be compared with the other civil radio operators of other departments; the Fourth Pay Commission, having gone deep into the various aspects of the pay structure of various categories of the employees of the Central Government, had made the recommendation; (3) even to apply the principle of equal pay for equal work details and particulars relating to comparable employees were not made available so as to give direction as is done in the impugned judgment; (4) apart from the difference in pay scales the Radio Operators in CRPF have various other facilities, which are not available to the other Radio Operators in civil departments and other Central Government agencies; and (5) the respondent being in the rank of Naik in fact is claiming the benefits and pay scale available to the promotional post of Assistant Sub-Inspector of Police; the direction given in the impugned judgment leads to grant of pay scale of the Assistant Sub-Inspector of Police to the respondent, who is in the rank of Naik only; there was no material from which definite conclusion regarding essential qualification, method of recruitment and other relevant factors for comparison between the different organizations to apply the principle of equal pay for equal work. The learned senior counsel for the respondent made submissions supporting the impugned judgment. He urged that the appellants themselves having made recommendations for grant of pay scale, which supported the claim of the respondent, could not go back; the appellants could not take conflicting positions -- one before the Pay Commission and the other before the court. According to the learned counsel when all the facts are stated in the recommendations submitted to the Pay Commission as to the nature of the duties and other relevant factors, nothing more was required to be done in order to grant pay scale as demanded by the respondent; in this view no fault can be found with the judgment under appeal. We have carefully considered the submissions made by the learned counsel for the parties. The learned single Judge noticed that (1) the respondent was originally appointed as a Constable and had been promoted to the rank of Naik; he was given the necessary training departmentally and had been appointed as Naik (Radio Operator); his substantive post is that of Naik and his promotional post is that of Assistant Sub-Inspector of Police; the post of Naik is junior to that of Assistant Sub-Inspector of Police; as such respondent could not claim the pay scale of Assistant Sub-Inspector of Police, which is his promotional post. (2) There was no material before the court to come to a definite conclusion as to what are the essential qualifications and method of recruitment for the post of Radio Operator in Central Water Commission or Directorate of Police Wireless; the respondent being Naik working as a Radio Operator, is getting a special pay of Rs.80/- per month; there was nothing on record to show that the Radio Operator of the Central Water Commission and the Directorate of Police Wireless belong to the same rank of Naik of the CRPF. (3) It is clear from the Pay Commission Report that all Naiks of central police establishments including CRPF have been given the same scale of pay; therefore for the Naik Radio Operator there cannot be different scale of pay. In this view the writ petition was dismissed. The Division Bench of the High Court allowed the appeal filed by the respondent stating that admittedly the respondent was performing technical duties and was performing more hazardous job; the Radio Operators in CRPF were not only performing similar nature of duties as that of

Radio Operators of Central Water Commission or the Directorate of Police Wireless but they were also performing more hazardous duties. The appellants appreciating the nature of work made recommendations before the Pay Commission for higher pay scale but after the Pay Commission turned down the same, they have come forward with a different stand; the appellants cannot take conflicting stands one before the Pay Commission and the other before the court. The Pay Commission recommendations were not binding on the Government. They ought to have taken a decision on merits. On this basis the Division Bench gave directions as already stated above. In our considered view, the Division Bench of the High Court was not right and justified in straight away giving direction to grant pay scale to the respondent when there was no material placed before the court for comparison in order to apply the principle of equal pay for equal work between the Radio Operators of CRPF and the Radio Operators working in civil side in Central Water Commission and Directorate of Police Wireless. In the absence of material relating to other comparable employees as to the qualifications, method of recruitment, degree of skill, experience involved in performance of job, training required, responsibilities undertaken and other facilities in addition to pay scales, the learned single Judge was right when he stated in the order that in absence of such material it was not possible to grant relief to the respondent. No doubt, the Directorate of CRPF made recommendations to the Pay Commission for giving higher pay scales on the basis of which claim is made by the respondent for grant of pay scale. The factual statements contained in the recommendation of a particular department alone cannot be considered per se proof of such things or they cannot by themselves vouch for the correctness of the same. The said recommendation could not be taken as a recommendation made by the Government. Even otherwise mere recommendation did not confer any right on the respondent to make such a claim for writ of mandamus. The learned counsel for the respondent strongly relied on the judgment of this Court in *Randhir Singh vs. Union of India* and others and added that this decision has been followed in various subsequent decisions of this Court. According to him when the appellants have supported the claim of the respondent before the Pay Commission having regard to the nature of his duties, the Division Bench of the High Court was right in granting relief to him. There is no difficulty in accepting the principle stated in the said decision and which, in fact, has been reiterated in subsequent decisions of this Court. But as stated in the said decision the principle of equal pay for equal work is not an abstract doctrine but one of substance. In para 8 of the said judgment it is stated thus: - Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle equal pay for equal work is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. (emphasis supplied) Few decisions were cited by the learned counsel for the appellants in support of his submissions that the courts may not interfere in the matter of fixation of pay scales when the Government fixes or grants pay scales on the basis of various factors including the Pay Commission recommendations that too in the absence of relevant details and particulars of comparable employees. This Court in *S.L.*

Ahmed and others vs. Union of India and others has held thus: - It is not for this Court, we think, to examine how far below should be the revised pay scale of the Radio Operators Grade III (Naik). If the Government has prescribed a particular pay scale in respect of them, all that the court can do is to merely pronounce on the validity of the fixation. In the event that the court finds that the prescription is contrary to law it will strike it down and direct the Government to take a fresh decision in the matter. It is a very different case from one where this Court has sought to prescribe pay scales in appeals directly preferred from an award of the Labour Court dealing with such a matter. In the latter case, this Court in its appellate jurisdiction can be regarded as enjoying all the jurisdiction which the Labour Court enjoys. That is not so in the present case. (emphasis supplied) Para 18 of the judgment of this Court in State of U.P. and others vs. J.P. Chaurasia and others reads: 18. 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 or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts of 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 of posts. If 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. (emphasis supplied) Yet, again this Court, having referred to its earlier decisions including of Randhir Singh and J.P. Chaurasia aforementioned, in para 5 of its judgment in State of Haryana and others vs. Jasmer Singh and others has stated thus: - 5. The principle of equal pay for equal work is not always easy to apply. There are inherent difficulties in comparing and evaluating work done by different persons in different organizations, or even in the same organization. The principle was originally enunciated as a part of the Directive Principles of State Policy in Article 39(d) of the Constitution. In the case of Randhir Singh v. Union of India, however, this Court said that this was a constitutional goal capable of being achieved through constitutional remedies and held that the principle had to be read into Articles 14 and 16 of the Constitution. In that case a Driver-constable in the Delhi Police Force under the Delhi Administration claimed equal salary as other Drivers and this prayer was granted. The same principle was subsequently followed for the purpose of granting relief in Dhirendra Chamoli v. State of U.P. [(1986) 1 SCC 637] and Jaipal v. State of Haryana [(1988) 3 SCC 354]. In the case of Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India [(1988) 3 SCC 91], however, this Court explained the principle of equal pay for equal work by holding that differentiation in pay scales among government servants holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality

would be a valid differentiation. In that case different pay scales fixed for Stenographers (Grade I) working in the Central Secretariat and those attached to the heads of subordinate offices on the basis of a recommendation of the Pay Commission was held as not violating Article 14 and as not being contrary to the principle of equal pay for equal work. This Court also said 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. (emphasis supplied) In *Union of India and another vs. P.V. Hariharan and another* this Court observed, It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realize that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of equal pay for equal work is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. In this background as to the position of law touching the controversy raised in this appeal, we have no hesitation in holding that the impugned judgment and order are unsustainable. The learned counsel for the appellants placed before us a chart showing difference in pay scales, facilities, other allowances, leave period, providing accommodation, etc. for the purpose of comparison between the pay scales and other facilities of the respondent and similar other employees working in Directorate of Coordination Police Wireless and other Central Government agencies. The learned counsel for the respondent reiterated that the nature of duties and responsibilities of the respondent are not only similar when compared to other employees similarly placed, but on the other hand they are more hazardous. It is an indisputable fact that the pay-scales now claimed by the respondent are those prescribed for the post of Assistant Sub-Inspector. As already noticed above, it is once again a promotional post for a Naik. Acceding to the claim made by the respondent would not merely result in change in the pay-scales but may also lead to alteration of the pattern of hierarchy requiring re-orientation and restructuring of the other posts above and below the post of respondent. Added to this, such consequences are likely to be felt in the various other Central Police Establishments as well. All these which are likely to have a chain-reaction, may require further consideration afresh by expert body like the Pay Commission or the Government itself at an appropriate time in an appropriate manner. Courts should normally leave such matters for the wisdom of administration except the proven cases of hostile discrimination. But in the case on hand, having regard to the facts and circumstances of the case and the position of law stated above, the Division Bench of the High Court was not right in granting the relief itself, straightaway to the respondent; that too, without examining the implications and impact of giving such directions on other cadres. However, we make it clear that the rejection of the claim of the respondent need not be taken as an issue closed once and for all. It is always open to the

Government to consider the issue either by making reference to the Pay Commission or itself once again as to the grant of pay-scales to the respondent. It is open to the respondent to make further and detailed representation.

In the result, for the reasons stated above, this appeal is entitled to succeed. Accordingly, it is allowed. The judgment and order under appeal are set aside and the judgment of the learned Single Judge is restored. No costs.

JUDIS