

PETITIONER:
S.L. AHMED & OTHERS

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT 26/07/1982

BENCH:
PATHAK, R.S.
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PATHAK, R.S.
REDDY, O. CHINNAPPA (J)

CITATION:
1982 AIR 1253 1983 SCR (1) 1
1982 SCC (2) 458 1982 SCALE (1) 532

ACT:
Central Civil Services (Revised Pay) Rules, 1973 -
Revision of scale of pay - Radio operators Grade III (Naik)
in C.R.P.F - Validity of.

HEADNOTE:

An identical scale of pay was being enjoyed by both Naiks and Radio operators Grade III (Naik) in the antral Reserve Police Force before the revision of scales of pay of Central Government employees with effect from January 1, 1973 consequent upon the recommendations of the Third Pay Commission. However, Radio operators Grade III (Naik) were entitled to a special pay of Rs. 30. The Pay Commission recommended the scale of pay of Rs. 225-308 for the post of Naik but did not make any separate recommendation in respect of Radio operator Grade III (Naik).

The petitioners who were Radio operators Grade III (Naik) were initially paid a salary of Rs. 250 with a special pay of Rs. 30 from January 1, 1973. They were subsequently placed in the revised scale of pay of Rs. 225-308 given to Naiks with a special pay of Rs. 30 and the excess amount paid earlier was sought to be recovered from them.

The petitioners contended: (i) that they were entitled to the scale of pay of Rs. 260-430 as that was the scale of pay prescribed for posts in other departments for which matriculation was the minimum qualification, (ii) that their scale of pay could not be far below the scale of pay of Rs. 330-480 prescribed for the next immediate senior post of Radio operator Grade II and (iii) that they should be paid at par with comparable government employees on the civil side. In the alternative, the petitioners contended that they were entitled to the pay of Rs. 250 and the special pay of Rs. 30 paid to them before re-fixation of their salary.

Dismissing the petition,

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HELD: 1. The minimum qualification prescribed for the post of Naik as on January 1, 1973 was Middle School Examination and it had been raised to Matriculation Examination only from January 24, 1975. As Naiks and Radio operators Grade III (Naik) had been uniformly treated at par in the matter of that basic qualification, it was not open

to the petitioners to base their claim with reference to a qualification which had not existed on January 1, 1973. [5 E-G]

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2. It was not for the Court to examine how far below should be the revised scale of pay of Radio operators Grade III as compared to that of Radio operators Grade II. If the Government had prescribed a particular pay scale in respect of them, all that the Court could do was to merely pronounce on the validity of that fixation. If the prescription was found contrary to law, the Court would strike it down and direct the Government to take a fresh decision in the matter. This case was very different from one where the Court had sought to prescribe scales of pay in appeals directly preferred from an award of the Labour Court dealing with such a matter. In the latter case, the Court in its appellate jurisdiction could be regarded as enjoying all the jurisdiction which the Labour Court enjoyed. [6 A-C]

3. Radio operators Grade III (Naik) had to be considered substantially on the same basis as Naiks and it was because of their special qualifications and of the specialised nature of their duties that they had been provided with a special pay in addition. Ever since 1975 Radio operators Grade III (Naik) had been selected only from the rank of Constables on the General Duty Side. The revised pay scale of Radio operators of the rank of Head Constable as well as Head Constables on General Duty was Rs. 260-350 with a special pay of Rs. 40 to the former. As this post was the next immediate higher post above the rank of Naik, it was apparent that there was no justification for giving to the petitioners, who were junior in rank, the scale of pay of Rs. 260-430. [6 D-F]

4. The petitioners could not claim to be paid at par with comparable government employees on the civil side as they were entitled to certain benefits which were not available to the latter. [6 G-H; 7 A-B]

5. The revised pay initially paid to the petitioners had been computed in error inasmuch as when fixing the pay in the revised scale the special pay had been wrongly taken into account. [7 D-E]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 3783 of 1978.

(Under Article 32 of the Constitution of India)

R.K. Garg and V.J. Francis for the Petitioner.

M.M. Abdul Khader, Mrs. Shobha Dikshit and Miss A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

PATHAK, J. The Petitioners are Radio operators Grade-(III) (Naik) in the Signals branch of the Central Reserve Police Force. They complain that under the Central Civil Services (Revised Pay) Rules, 1973 they have been placed in the pay scale Rs. 225-308 when they were entitled to the pay scale Rs. 260-430.

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When the writ petition came on for hearing in the first instance, a Bench of this Court made an order on December 19, 1979 providing an opportunity to the petitioners to put in a representation before the Government and requiring the Government to dispose of the representation. The petitioners did make the representation and the Government considered it but the relief claimed by the petitioners was denied. In accordance with the further directions contained in the

order dated December 19, 1979 this writ petition has now come on for consideration on its merits.

The Central Reserve Police Force forms a part of the Ministry of Home Affairs in the Government of India, and it has a Signals branch in which one of the categories is that of Radio operators Grade III (Naik). The petitioners say that Naik Radio operators are appointed either by direct recruitment, in which case the candidate is required to be a Matriculate or his equivalent, or by promotion from the rank of Constable, in which case the Constable should have passed the Radio operators Grade III course. Originally, members of the Central Reserve Police Force of the rank of Naik enjoyed the pay scale Rs.85-110, and Naik Radio operators were given a special pay of Rs. 30 in view of their special qualifications and the specialised nature of their duties. By its order dated April 23, 1970 the Central Government appointed the Third Pay Commission to make recommendations in regard to the structure of the emoluments and the conditions of service of different classes of Central Government employees. The Commission submitted its final report to the Central Government on March, 31, 1973. Paragraph 30 of Chapter 29 of Part I of Volume 2 contains the recommendations in respect of Radio Mechanics in the Central Reserve Police Force. It states :-

"30. Post of Radio Mechanic, Grade I in the CRP and Sub-Inspector (Radio Mechanic) in the BSF are on the scale of Rs. 150-10-290-15-380, but the Diploma holders are given the scale of Rs. 180-10-290-15-380. We recommend for these posts the scale of Rs. 380-560 but the Diploma holders working on these posts should be remunere rated on the scale of Rs. 425-700. Below this level, posts of Radio Mechanic, Grade II and the Radio operators are on

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the scale of Rs.150-10-210 or on the scale of Rs. 125-3-131-4-155 with a special pay of Rs. 35 per month and we recommend that these posts should be given the scale of Rs. 330-480. For the posts of Radio Fitter on the scale of Rs. 125-3-131-4-155 we recommend the scale of Rs. 320-400."

Admittedly, no reference has been made therein to Radio operators Grade III (Naik). Following the recommendations of the Third Pay Commission the Central Government framed the Central Civil Services (Revised Pay) Rules, 1973 which came into force on January 1, 1973. The petitioners exercised their option in favour of the revised pay scales. They were paid a salary of Rs. 250 with a special pay of Rs. 30 from January, 1975 for a few months, together with arrears on that basis for the years 1973 and 1974. The petitioners accepted the revised pay and special pay although, they say, it fell short of the pay to which they were entitled. Subsequently, in April 1975, the petitioners were placed in the revised pay scale Rs. 225-308 given to Naiks and the excess amount paid earlier to them was sought to be recovered by deducting from future payments of their salary.

Aggrieved by the refixation of their pay and the deduction of the excess already paid, they have filed the present writ petition.

So far as the deduction is concerned, this Court has already directed by its order dated December 19, 1979 that the Government should restore to the petitioners the excess amount already recovered from them. Nevertheless, it will be necessary to examine the validity of the refixation of the salary now paid to the petitioners inasmuch as that question is relevant for the period commencing from the date

from which salary has been actually paid on the refixed basis.

The question whether the petitioners have been properly placed in the pay scale Rs. 225-308 must be examined, therefore, from two aspects;

1, Their claim to the Pay scale Rs. 260.430 and

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2. Alternatively, their claim to the pay of Rs. 250/- and the special pay of Rs. 30 paid to them before the refixation of their salary.

On the first point, a few facts may be briefly stated. On the basis of the recommendations of the Third Pay Commission the pay scales of all Central Government employees, including personnel in the para-military forces, were revised with effect from January 1, 1973. Under the original pay scales, Naik Radio operators were placed on the scale Rs.85-110 with a special pay of Rs. 30 in view of their special qualifications and the specialised nature of their duties. They were entitled to allowances calculated on the aggregate of their basic pay and special pay. The Commission prescribed a scale of Rs. 225-308 for the post of Naik, but did not make any separate recommendation in respect of the post of Radio operator Grade III (Naik). Inasmuch as before the revision of the pay scales the scale of a Naik and Radio operator Grade III (Naik) was the same, that is to say, Rs. 85-110, the revised pay scale for the post of Radio operator Grade III (Naik) was raised to the same level as that prescribed for the post of Naik, that is to say, Rs. 225-308, and in view of their special qualifications and the specialised nature of their duties Radio operators Grade III (Naik) were given a special pay of Rs. 30 also.

The petitioners urge that posts in other departments of the Central Government, for which the minimum qualification was the Matriculation examination and an additional requirement of training, carried the pay scale of Rs. 260-430 and since that requirement was also the basis of appointments to the post of Radio operators Grade III (Naik) they should also be held entitled to that pay scale. Now the revised pay has been given with effect from January 1, 1973 and on that date the qualification in the case of a Naik was the Middle School examination, and it was only with effect from January 24, 19 75 that the qualification was raised to the Matriculation examination. As Naiks and Radio operators Grade III (Naik) had been uniformly treated at par in the matter of that basic s qualification it is not open to the petitioners to base their claim with reference to a qualification which did not exist on January 1, 1973.

In support of their claim to the pay scale Rs. 260-430, the petitioners have drawn our attention to the circumstance that the

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immediately next senior category, Radio operators Grade II, carries the revised scale Rs. 330-480 and, it is contended, the revised pay scale in the case of Radio operators Grade III should not be far below 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. 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 that fixation. In the event that the court finds that the prescription is contrary to law it will strike it down and direct thee 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.

We are satisfied that Radio operators Grade III (Naik) have to be considered substantially on the same basis as Naiks in the Central Reserve Police Force, and it is because of their special qualifications and of the specialised nature of their duties that they have been provided a special pay in addition. It may be mentioned that ever since 1975 Radio operators Grade III (Naik) are selected only from the rank of Constables on the General Duty Side. The revised pay scale of Radio operators of the rank of Head Constable as well as Head Constables on General Duty is Rs. 260-350, with a special pay of Rs. 40 to Head Constables (Radio operators). This post is the immediately next higher post above the rank of Naik, and it is apparent that there would be no justification of giving to the petitioners, who are junior in rank, the pay scale Rs. 260-430.

The petitioners have also contended that they should be paid at par with comparable Government employees on the civil side. This claim is refuted by the respondents who point out that the petitioners are entitled to certain benefits not available to the others. Learned counsel for the respondents has listed before us a number of such benefits. It is pointed out that the petitioners are entitled to casual leave for a period of twenty days as against casual leave for a period of twelve days for Government employees on the civil side, earned leave for a period of sixty days as against earned leave for a period of thirty three days for Government employees on the civil side, and rent free accommodation or house

allowance at 10% of the salary in contrast to Government employees on the civil side who are liable to pay 10% of the salary if accommodation is provided.

We are not satisfied that the petitioners are entitled to the pay scale Rs. 260-430.

The second point requires us to consider the validity of the refixation of the pay of the petitioners when they were receiving Rs. 250 with a special pay of Rs. 30. According to the recommendations of The Third Pay Commission, the existing pay scale of a Government servant drawing basic pay upto Rs. 1800 per month was to be augmented by an amount representing five per cent of the basic pay subject to a minimum of Rs. 15 and a maximum of Rs. 50. The Government of India Memorandum No. F. 67/II/23/74-1C dated May 17, 1974 directed that special pay was not to be included in the existing emoluments for the purpose of determining the accretion where in addition to the revised pay the Government servant was to be given a special pay also. The revised pay actually paid to the petitioners initially was computed in error inasmuch as when fixing the pay in the revised scale the special pay was taken into account for the purpose of computing the accretion. It, therefore, became necessary to recompute the amount payable to the petitioners and to reduce it to the level now paid to them. It has not been shown to us that the basis adopted for refixation of the pay is invalid.

In the result, this petition fails and is dismissed, but in the circumstances there is no order as to costs. This will not affect the order dated December 19, 1979 directing the Government to restore to the petitioners the excess paid to them earlier and subsequently recovered from them.

H.L.C.
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Petition dismissed.

JUDIS