

PETITIONER:
TELECOMMUNICATION RESEARCH CENTRE SCIENTIFIC OFFICERS (CLASS

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT 16/01/1987

BENCH:
VENKATARAMIAH, E.S. (J)
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VENKATARAMIAH, E.S. (J)
SINGH, K.N. (J)

CITATION:
1987 AIR 490 1987 SCR (1) 1007
1987 SCC (1) 582 JT 1987 (1) 152
1987 SCALE (1) 62

ACT:

Constitution of India, 1950: Articles 14 and 16: Civil Services-Pay parity--Scientific and Technical Officers, class I, Telecommunication Research Centre--Direct recruits through Union Public Service Commission--Denied special pay admissible to--Departmental Transferred Officers Class I--Held discriminatory and ultra vires.

HEADNOTE:

The recruitment to Class I posts in the Telecommunication Research Centre of the Posts and Telegraphs Department is made partly by direct recruitment through the Union Public Service Commission and partly through transfer of Group A and Group B Field Officers. The officers brought into the Centre on transfer were being paid special pay in addition to their pay. The direct recruits were denied this privilege.

The petitioners 2 to 22, members of the first petitioner-Association, who belong to the direct recruits category and are working in the Centre on the same posts, and possess same qualifications, discharge same functions and duties as the transferred officers, and are in the same pay scales, assailed the denial of special pay to them as discriminatory and violative of Articles 14 and 16 of the Constitution. Their claim was contested by the Department and the discrimination was sought to be justified on the ground that the direct recruits were specifically recruited to the Centre for a limited purpose and their capability, as against transferred officers, selected by the Union Public Service Commission after rigorous competitive examination, of taking over a complete group and directing them to fruitful research was doubtful.

Allowing the writ petitions, the Court,

HELD: 1. Denial of special pay to Class I direct recruits in the Telecommunication Research Centre amounts to violation of Articles 14 and 16 of the Constitution. They are entitled to the special pay at the same rates at which it is paid to the transferred officers working in that Centre with effect from the date from which the latter have been drawing it. [1013B-C]

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2.1 It is not the case of the Government that the petitioners are not competent and are not able to discharge their duties. All the relevant things such as qualifications, functions, duties and responsibilities are the same as between the direct recruits and the transferred officials. Their scale of pay is also the same. [1011G-H]

2.2 The special pay is not being paid to the transferred officials for compensating their displacement or for their qualifications. It is not deputation allowance. It is paid for the arduous and special nature of the functions to be discharged in the Telecommunication Research Centre. The rigorous test is applied while transferring them to the Centre to prevent persons of inferior caliber amongst them getting into it. It does not mean that persons who are directly recruited and working in the Centre are inferior to those who enter the Centre by transfer. Nor it could be said that the transferred officials had to perform in the Centre duties which were not in their general line. There was, thus, no justification to deny the special pay at the same rates to the direct recruits working in that Centre. [1011H; 1012A-B; 1013A]

Randhir Singh v. Union of India and Others, [1982] 3 SCR, 298 and M.P. Singh & Others v. Union of India, Writ Petition Nos. 13097--13176 of 1984, decided on January 16, 1987, applied.

Union of India to pay special pay to the direct recruits with effect from the date on which the transferred officers commenced to draw it upto date and to continue to pay it in future also as long as the transferred officers continue to get it. [1013C-D]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 3269-3290 of 1982

(Under Article 32 of the Constitution of India).

M.S. Ganesh for the Petitioners.

V.Kanth, C.V. Subba Rao, Ms. Halida Khatun, N.S. Das Bahl and D.N. Misra for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The first petitioner in these petitions is the Telecommunication Research Centre Scientific Officers (Class I) Association. The petitioners 2 to 22 are its members. They are working

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as officers in the Telecommunication Research Centre of the Posts and Telegraph Department which is directly under the control of the P&T Board of the Ministry of Communications, Government of India. The Telecommunication Research Centre is engaged in the research and development work concerning the telecommunication equipment for the use of the Department and in advising the P&T Board on relevant technical matters relating to the introduction of new equipment and technology in the existing public communication net work. The recruitment to the different cadres in the Telecommunication Research Centre is now being made under the Scientific and Technical Officers Grade I (Telecommunications Research Centre of the Posts and Telegraphs Department) Recruitment Rules, 1962 (hereinafter referred to as "the Recruitment Rules") framed by the President under the proviso to Article 309 of the Constitution of India. During the period between 1956 and 1962 and further till 1965 all the Class I posts of the Scientific and Technical Officers Grade I namely Assistant Director and Deputy Director were manned

by the Transferred Field Officers belonging to the Indian Telecommunication Service Group A and Group B. For the first time the Union Public Service Commission advertised for the recruitment of 10 Scientific and Technical Officers Grade I in the Telecommunications Research Centre under the Recruitment Rules. These were General Central Service Class I posts and they continue to be so till today. In response to the said advertisement petitioners 2,3 and 4 applied for recruitment and they were selected for appointment to the posts of S&T.O. Grade I. At the time of the filing of these writ petitions there were in all 21 officers who had been recruited at the entry level of Junior Class I posts of S & T.Os Grade I. They were recruited in four batches in 1965, 1967, 1970 and 1973.

The Class I posts in the Telecommunication Research Centre consist of the following posts:

1. Director (Senior Administrative Grade Level I)
2. Additional Director (Senior Administrative Grade Level II)
3. Deputy Directors (Junior Administrative Grade)
4. Assistant Directors (Senior Class I)
5. Scientific and Technical Officers Grade I (Junior Class I).

The Posts of Deputy Directors, Assistant Directors and S.T.Os Grade I are filled by the following methods:

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(a) by direct recruitment through the Union Public Service Commission, (The petitioners belong to this category. They are now holding the posts of Assistant Directors or Deputy Directors since 1975. Direct recruitment to the Telecommunication Research Centre has been discontinued.)

(b) by transfer of Group A Field Officers recruited through the Union Public Service Commission by written examination followed by an interview, (These officers belong to the Indian Telecommunication Service Group B) and

(c) by transfer of Group B Field Officers who are Posts and Telegraphs departmental promotees belonging to the Telegraph Engineering Service, Group.

The direct recruits to which category the petitioners belong and the Transferred Field Officers Group A working in the Telecommunication Research Centre discharge same functions and duties. The qualifications for recruitment prescribed in the case of both classes are the same. They are in the same pay scales from 1.1. 1973 at the comparable levels/grades, i.e., Scientific and Technical Officers Grade I, Assistant Directors and Deputy Directors as recommended by the Third Pay Commission and accepted by the Government.

In these petitions, the petitioners have raised two grounds, namely, the first relating to the denial of promotional opportunities to them on account of the irregular implementation of the rules of promotion contained in the Recruitment Rules and the second relating to violation of Article 14 and Article 16 of the Constitution by not granting them the same special pay which is granted to the transferred officers who are working in the Telecommunication Research Centre in the same posts and discharging the same functions as the petitioners.

Having regard to the inadequacy of the material produced by both the sides before us and to the fact that the officers who are likely to be affected by the decision are not impleaded as parties by name to these petitions, we are of the view that the first question should be left open to be decided by the Central Administrative Tribunal. We accordingly express no opinion on the said question.

The second question relating to the grant of Special Pay

requires

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to be decided by us. It is seen that the Indian Telecommunication Service Officers who are working in the Telecommunication Research Centre are being given Special Pay of Rs. 300, Rs. 200 and Rs. 150 per month in addition to their pay scales in the grades of Deputy Director, Assistant Director and Scientific and Technical Officers Grade I respectively with effect from 1.1.1973. The direct recruits to which category the petitioners belong are not given any Special Pay in these grades and they are given only the pay at the pay scales prescribed for them. It is stated that the total number of officers who are thus getting Special Pay is of the order of 275 while only about 25 officers who are direct recruits working in the Telecommunication Research Centre are not given Special Pay paid to the others holding the same posts. A number of representations had been made earlier by the direct recruits but all in vain. It appears that at the official meeting held in May, 1979 with Shri J.A. Dave Secretary, Communications, Government of India, there was consensus on the question of granting of Special Pay to the direct recruits as in the case of transferred officers as can be seen from the letter written by the Association on the petitioners (Annexure XIX) and that the Director, Telecommunication Research Centre also recommended for granting Special Pay accordingly. But nothing came out of all this. Hence the petitioners have filed these petitions demanding payment of Special Pay to them also.

The discrimination between the direct recruits and the transferred officers regarding the payment of Special Pay is attempted to be justified by the Government in the Counter-affidavit filed by Shri C.L. Sumon, Assistant Director General (P & T Directorate). It is stated that the petitioners (direct recruits) who are specifically recruited to the Telecommunication Research Centre for a limited purpose are not entitled to any Special Pay but the transferred officers from the Indian Telecommunications Service who are selected by the Union Public Service Commission after a rigorous competition examination need to be paid Special Pay. It is alleged that 'it is felt that most of the direct recruits TRC officers may be good in small areas in which they are working, but their capability of taking over a complete group and directing them to fruitful research is doubtful'. This statement is a vague one and has the effect of adding insult to injury. This allegation appears to be a lame excuse for denying what is legitimately due to the direct recruits. It is not the case of the Government that the petitioners are not competent and are not able to discharge their duties. All the direct recruits are graduate engineers and have been working throughout in the Telecommunication Research Centre. They do the same job as the transferred officials. The Special Pay is not being paid to the

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transferred officials for compensating their displacement or for their qualifications. It is not deputation allowance. It is paid for the arduous and special nature of the functions to be discharged in the Telecommunication Research Centre. The rigorous test is applied while transferring them to the Telecommunication Research Centre to prevent persons of inferior caliber amongst them getting into the said centre. It does not mean that persons who are directly recruited and working in the centre are inferior to those who enter the centre by transfer. It is interesting to note that the Minister of State for Communications answered the question relating to non-payment of Special Pay in the Lok Sabha on

March 30, 1982 thus:

"Question No. 5864--Will the Minister of Communications be pleased to state:

(c) whether it is a fact that Special Pay is not given to a few graduate engineers recruited specifically for TRC when the qualifications, functions, duties and responsibilities of these officers in TRC are the same as those of the field officers transferred to TRC and what is the reason for not doing so?"

Answer--Minister of State for Communications:

".....
2. The officers specifically recruited for TRC through UPSC, are performing functions for which they are recruited, while on the other hand, the officers drawn from the ITS cadre, when posted in TRC, are required to perform duties, which are not in their general line."

It is seen from the above answer that the Government had virtually admitted that all relevant things such as qualifications, functions, duties and responsibilities are the same as between direct recruits and the transferred officials and that the transferred officials had to be paid extra amount by way of Special Pay in addition to their scale of pay which is the same as the scale of pay of direct recruits because the transferred officials had to perform in the Telecommunication Research Centre duties which are not in their general line. In another part of the same answer it was also admitted that many such transferred officials were in the Telecommunication Research Centre for more than six years. Still the Government did not show any eagerness

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to grant special pay to the direct recruits also. We feel that there is no justification to deny the Special Pay at the same rates to the direct recruits working in the Telecommunication Research Centre. Denial of Special Pay in the above circumstances to the direct recruits amounts to violation of Articles 14 and 16 of the Constitution of India.

Following the decision of this Court in *Randhir Singh v. Union of India and Others*, [1982] 3 SCR 298 and the decision of this Court in *M.P. Singh & Others v. Union of India*, (Writ Petition Nos. 1309713 176 of 1984 decided today) we hold that the direct recruits (to which category the petitioners belong) in the Telecommunication Research Centre are entitled to the Special Pay at the same rates at which it is paid to the transferred officers working in that centre with effect from the date from which the transferred officers have been drawing the Special Pay. We accordingly direct 'the Respondent No. 1--Union of India to pay the special pay to the direct recruits with effect from the date on which the transferred officers commenced to draw the Special Pay upto date and to continue to pay it in future also as long as the transferred officers continue to get it. The arrears of the Special Pay upto date payable to the direct recruits shall be paid within four months from today.

The above petitions are allowed to the above extent. The question relating to the denial of promotional opportunities to the petitioners according to the Recruitment Rules is left open to be agitated before the Central Administrative Tribunal. No costs.

P.S.S.

Petitions

allowed.

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