

S. L. Ahmed and Others

Vs

Union of India and Others

Writ Petition No. 3783 of 1978

(O. Chinnappa Reddy, R. S. Pathak JJ)

26.07.1982

JUDGMENT

PATHAK, J. -

1. 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.

2. 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.

3. 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 recommended for these posts the scale of Rs 380-560 but the Diploma holders working on these posts should be remunerated on the scale of Rs 425-700. Below this level, posts of Radio Mechanic, Grade II and the Radio Operators are on 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.

4. 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.

5. Aggrieved by the re-fixation of their pay and the deduction of the excess already paid, they have filed the present writ petition.

6. 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 re-fixation 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 re-fixed basis.

7. 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

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

8. 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 II (Naik) were given a special pay of Rs 30 also.

9. 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, 1975 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 basis 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.

10. In support of their claim to the pay scale Rs 260-430, the petitioners have drawn our attention to the circumstance that the immediately next senior category, Radio Operators Grade II, carried the revised scale Rs 330-480 and, it is contended, the revised pay scale in the case of Radio Operators Grade III (Naik) 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 (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 that 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.

11. 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.

12. 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 20 days as against casual leave for a period of 12 days for government employees on the civil side, earned leave for a period of 60 days as against earned leave for a period of 33 days for government employees on the civil side, and rent-free accommodation or house allowance at 10 per cent of the salary in contrast to government employees on the civil side who are liable to pay 10 per cent of the salary if accommodation is provided.

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

14. The second point requires us to consider the validity of the re-fixation 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 up to 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-IC 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.

15. 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.

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