

Union of India and Others

Vs

Makhan Chandra Roy

Civil Appeals Nos. 10608-10609 of 1995

(S. B. Majmudar, M. Jagannadha Rao JJ)

23.04.1997

JUDGMENT

MAJMUDAR, J. –

1. These two civil appeals on special leave have been moved by the Union of India and its officers challenging the orders passed by the Central Administrative Tribunal, Cuttack Bench at Cuttack by which each of the respondents in these appeals was given a higher pay scale. We shall first deal with Civil Appeal No. 10608 of 1995.

2. The respondent herein was working as a Laboratory Assistant under Dandakaranya Development Authority. He was granted pay scale of Rs 260-400. After the recommendations of the Fourth Pay Commission, the Central Government promulgated the Central Civil Service Revised Pay Rules, 1986. As per these Pay Rules, the respondent's pay scale got a hike. This revised pay scale with effect from 1-1-1986 worked up to Rs 950-1500. According to the respondent he was entitled to a still higher pay scale and as that was not granted to him, he moved the Tribunal by original application. The Tribunal after hearing the contesting parties took the view that the respondent was not entitled to any higher pay scale only on the ground of equal pay for equal work. That a higher pay scale given to Laboratory Assistants both in the Ministries of Defence and Railways could not automatically be given to the respondent as he was a mere matriculate having only 5 weeks' training in the Central Laboratory of Indore, while those Laboratory Assistants in the aforesaid Ministries of Defence and Railways were having better educational qualifications. On the aforesaid finding reached by the Tribunal on facts, the OA should have been dismissed. Instead, the Tribunal perhaps thinking that because the petitioner had moved the Tribunal, he should not go empty-handed and must be given some relief from somewhere, took the view that because the Auxiliary Nurses and Midwives who were also earlier getting two scales of pay of Rs 260-350 and Rs 260-400 were given a revised pay scale of Rs 975-1 540 under the same pay rules, the respondent should also be granted the said pay scale of Rs 975-1540 instead of Rs 950-1500. In our view the aforesaid reasoning adopted by the Tribunal is totally misconceived and cannot be sustained. When scales. The Tribunal having come to the conclusion that on merits the respondent had no case on the ground of equal pay for equal work, the OA ought to have been dismissed. Our attention was also drawn by the learned Senior Counsel for the appellant to a decision of this Court reported in State of UP v. J. P Chaurasia [(1989)] SCC 121 : 1989 SCC (L&S) 71 : (1988) 8 ATC 929]. In that judgment the following observations are made : (SCC p. 130, para 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 a 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 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."

3. Consequently, it must be held that the Tribunal had committed patent error of law in passing the impugned order. In the result, this appeal is allowed. The judgment and order of the Tribunal are quashed and set aside and the original application filed by the respondent is dismissed. However, in the facts and circumstances of the case there will be no order as to costs.

4. That takes us to the Civil Appeal No. 10609 of 1995.

5. In this case the respondent was a Malaria Technician working with the Dandakaranya Development Authority. His earlier pay scale was Rs 380-560. As per the Revised Pay Rules, 1986 his pay scale was raised to Rs 1320-2040 with effect from 1-1-1986. The respondent felt aggrieved by the said hike as in his view he first deserved to be placed in selection grade by the authorities and then the increased pay scale for selection grade employees should have been made available to him. With that grievance he approached the same Tribunal. The Tribunal rejected his contention that he was entitled to be placed in selection grade as there was no vacancy in that grade. Once that conclusion is reached, the respondent's OA should have been dismissed. Instead, following the same logic which appealed to the Tribunal in the earlier case, the Tribunal thought that some relief at least should be given to the respondent who should not be turned out empty-handed. With the result, the Tribunal undertook a very curious unauthorised exercise. The Tribunal considered the fact that Pharmacists, Radiographers and X-ray Technicians who were earlier getting the pay scale of Rs 330-560 were granted a higher pay scale of Rs 1350-2200. The same pay scale should be made available to the respondent also who was earlier getting the pay scale of Rs 380-560. It is difficult to appreciate this line of reasoning which appealed to the Tribunal. When we turn to the Revised Pay Rules, we find in Schedule I, Part B, Item 12 which deals with all posts carrying present pay scales wherein the pay scale of Rs 380-560 which was earlier available to the respondent is mentioned and the revised pay scale as per Revised Pay Rules is stated to be Rs 1320-2040. This pay scale is admittedly made available to the respondent. But the Tribunal found out another pay scale mentioned in Part B of the Schedule to the Rules where in para IX dealing with paramedical staff, Radiographers, X-ray Technicians and Pharmacists are referred to. Their earlier pay scale was Rs 330-560 which was increased to Rs 1350-2200. According to the Tribunal this pay scale should have been given to the respondent. It is difficult to appreciate how the respondent who was a Malaria Technician should be straightaway given pay scale of Radiographers or Pharmacists who are admittedly working in a different department and were doing entirely different type of work. What enhanced pay scale should be given to a particular employee is a within the domain of the authorities themselves who appoint them and the Tribunal should not have ventured in this forbidden field.

6. Consequently, the decision of the Tribunal in this case also cannot be sustained. In the result this

appeal is also allowed. The judgment and order of the Tribunal are set aside and the OP filed by the respondent is dismissed. In the circumstances of the case, there will be no order as to costs.