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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

.....

O.A. No. 1309/88

Date of Decision: 21. 12. 88

S.P. Banerjee

...Applicant

Versus

Union of India & Others

...Respondents.

Shri Arvind Gupta ..Counsel for the applicant.

Shri M.L. Verma ..Counsel for the respondents.

CORAM:

Hon'ble Shri P.C. Jain, Administrative Member.

Hon'ble Shri J.P. Sharma, Judicial Member.

JUDGEMENT

(Delivered by Hon'ble Shri J.P. Sharma)

The applicant since retired, was posted as Director General, R.P.F., New Delhi and has filed this application under Section 19 of the Administrative Tribunal Act, 1985, aggrieved by the fixation of his pay at Rs.7600, notwithstanding the fact that his juniors have been given higher pay of Rs.8,000/or given higher pay scale of Rs.7600-8000. Further, the Government of India's action in the Ministry of Home Affairs advising Ministry of Railway in recommending the difference between Rs.8,000 and Rs.7600 as personal pay of the applicant instead of regular pay has also been assailed as the personal pay will not count for his pensionary and other benefits.

The applicant has claimed the following reliefs:

(i) to direct the respondents No.1 to fix the pay of

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DG/RPF at Rs.8,000 fixed on the basis of 'equal pay for equal work'.

(ii) In the alternative and without prejudice to aforementioned relief to direct the respondents No.1 to fix the pay of applicant in the pay scale of Rs.7600-8000.

(iii) In the alternative to fix the pay of the applicant at Rs.8,000/- per month from the date at which pay of their juniors of 1954 and 1955 batch had been fixed at Rs.8,000/- per month.

(iv) To direct the respondents No.1 to fix the scale of the post of D.G. R.P.F. equal to D.G. B.S.F. and D.G. C.R.P.F. as recommended by Pay Commission.

(v) In the alternative and without prejudice to the aforementioned prayers to fix the pay of applicant as D.G. R.P.F. on the basis of pay he would have drawn as D.G. Police M.P. which would have had been his substantive post. ~~had he not been~~ selected and posted as D.G. R.P.F. and a certificate ~~certified~~ to the effect has already been ~~issued~~ by the Competent Authority.

(vi) In the alternative and without prejudice to the aforementioned prayer to fix retirement benefits of applicant on the aforementioned basis and lastly to make the above prayers effective w.e.f. 1-1-1986.

The prayer 9(b)(ix) has become infructuous where the applicant has prayed for the option to go back on the post of D.G. Police in their respective place.

The brief facts of the case are that the applicant is of the 1953 batch of the I.P.S. and was allocated

to MP Cadre. Because of the meritorious record of service, the applicant occupied various posts in various Organisation and including B.S.F., Cabinet Secretariat, R.P.F. The applicant was serving as I.G. R.P.F. from November, 1983 to October, 1985, D.G. R.P.F. from November, 1985 till his retirement on 29th February, 1988. At the time of his posting as D.G. R.P.F., the applicant was drawing the pay of Rs.3,000/- per month (pre-revised). By the Office Memorandum dated 6-4-1987 on the submission of the report of the Fourth Pay Commission, IPS (Pay) Rules, 1954 were amended and in Schedule III (A) in Column 3 for Rs.3,000, the figures 7600-100-8000 was substituted (Annexure 11).

3. The IPS Officers are recruited on All India basis and allocated after recruitment to various states, continued to remain all India Officers. These all India seniority is published from time to time. The Indian Police Service (Cadre) Rules, 1954 govern the terms of the condition of service of such IPS officers. These Rules are framed under Section 3(1) of the All India Services Act, 1951. Rule 2(9) of IPS Pay Rules, 1954 defines Cadre and Cadre post has having the same meaning respectively as is assigned to them in the IPS (Cadre) Rules, 1954. Schedule III(C) attached to the IPS Pay Rules, 1954, specifies post, carrying the pay above the time scale under the central Government when held by the members of in the Service. These are I.B., C.B.I., S.V.P., National Police Academy, B.S.F., C.R.P.F., I.T.B.P., C.I.S.F., B.P.R.A.D., N.S.C., N.C.R.S., R.P.F., and lastly Directorate of Coordination Police Computers.

4. There is another body of Rules called the IPS after (fixation of cadre strength) Rules, 1955. In these Rules, there is a provision of 40 per cent reservation for Central posts, posts for IPS officers. Thus, when nearly

half of the strength of IPS Officers to which ever state they may happen to be allocated, is entitled to be posted to central posts, manable by Police Officers, there has to exist some definite and uniform way, free from arbitrariness and discrimination for filling up of this central reserve. According to the applicant, this must be done in a manner governed not by arbitrariness but by fair guidelines. The Government of India have given several decisions under Rule 4 of the IPS Cadre Rules, 1954, and, one of these decisions clearly says that the Central Deputation Reserve which consists of post in Central Government is required to be filled by IPS officers. One such decision under Rule 2.4. says that neither a post declared equivalent to a post included in the Pay Schedule nor a post in respect of which such declaration is dispensed with, becomes a cadre post. This immediately, and, conversely, means that posts which are already in Schedule 'C' attached to the Pay Rules are IPS allotted cadre posts. According to the applicant the posts of this cadre must be filled on the basis of the All-India seniority of IPS and unless an officer is found or declared not to be fit for these posts, he ought not to be ignored for appointment thereto.

5. The Fourth Pay Commission has recommended that for the five Central Police Organisations, viz. BSF, ITBP, CRPF, CISF and Assam Rifles and two similar organisations, viz. the Coast Guard and the RPF, the top posts should get a fixed pay of Rs.7600/- per month. The Director, CBI and the Director, IB were treated separately and for both of them a recommendation of a fixed pay of Rs.8000/- per month was made. However, the Central Government made certain changes in the above recommendations giving DG/BSF and DG/CRPF Rs.8000/- (Fixed in place of Rs.7,600/-). The DGs of the State Police Forces have been given running scale of Rs.7600-8000/- in bigger states and Rs.7300-7600/- in smaller states. Thus, it will be seen that the DGs of Police were divided in four categories (a) Director, IB and CBI and DG BSF and CRPF getting Rs.8,000/- (fixed), (2) DGs of CPOs other than BSF, CRPF, namely, ITBP, CISF, RPF Rs. 7,600 (fixed), (3) DGs of bigger states Rs.7,600-8000/- and (4) DGs of smaller states Rs. 7300-7600/-.

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6. The grievance of the applicant, therefore, is that the post of DG/RPF has been given a fixed pay of Rs.7600/- p.m. while the post in no way has the status and responsibility less than the post of DGs of other Central Police Organisations where the pay of Rs.8000/- per month has been fixed.

7. The applicant has also pointed out certain cases of junior officers who have been allowed to draw in the revised pay scale more pay than the applicant chart as indicated in the given below:

<u>Name</u>	<u>Batch year</u>	<u>Cadre</u>	<u>Pay scale</u>	<u>Present pay</u>
3/Shri				
1.G.J.Pandit	1962	DG/Police, J&K	7600-8000	Rs.8,000/-
2.I.B.Negi	1958	UP Cadre DG Himachal Pradesh	Rs.7600-8000/-	
3.K.K.Zutshi	1959	Haryana Cadre DG Nagaland	Rs.7600-8000/-	
4.H.R.Swan	1957	Haryana Cadre DG Haryana	Rs.7600-8000/-	
5.Janak Kumar	1957	M.P. Cadre DG Mizoram	Rs.7600-8000/-	
6.Jamil Mohd.Q Qureshi	1956	M.P. Cadre DG Bihar	Rs.7600-8000/-	

8. It has been further pointed out by the applicant that the basis of higher remuneration seems to be entirely dependent on the element of chance and he has cited the following instances:

- i) Sh.S.D. Pandey, DG/CRPF, From 1-1-1986, Rs.8000 (Rtd.w.e.f. 31-3-1988)
- ii) Sh.P.K.Mallick, Spl.Secretary, M/O H.A. Rs.8000 from 1-1-87
- iii) Sh.M.K.Narayanan, Dir.IB Rs.8000/- from 1-4-1987
- iv) Sh.H.P.Bhatnagar, D.G.B.SF., Rs.8000/- from 1-8-87
- v) Sh.C.M.Radhakrishnan Nair, Spl. Director CBI Rs.8000 from 1-11-1987.
- vi) Sh.A.K.Verma, Spl.Secretary, RAW Rs.8000/- from 1-8-87.
- vii) H.A.Barari Retired from 31-3-1987 Rs.8000/-
- viii) Sh. Khandelwal, retired from 30-11-1987 Rs.8000/-

The applicant has stated that he was already a Director General when many of the above noted officers who are now given the pay of Rs.8000/- were not even promoted as DGs at that point of time. Thus, the applicant has also put up his case on the principle of next below rule.

9. It has also been stated that earlier also when a junior had been given a higher scale of pay, the pay of the senior was stepped up, so as to be equal to that of the junior. The case of Shri A. Anandaram, DG, CISF has been cited, who was given the scale of Rs.3000-3500 (pre-revised) w.e.f. 1-11-1984 on the ground that his junior Shri H.A. Barari, Director, IB had joined on the post carrying the scale of Rs.3000-3500 (pre-revised). It has been further stated that proviso to Rule 6 and Rule 9 of the IPS Pay Rules, 1954, specifically lays down that no one shall be deputed to a post carrying a prescribed pay which is less than, or a pay scale the maximum of which is less than the basic pay of the concerned officer which he would have drawn in the State cadre but for his deputation. Thus, the pay scale of any such officer shall not at any time be less than that what he would have drawn had he not been appointed to a deputation post. The Government has the authority of giving the seniors the pay which is not less than that of the juniors. In fact when such a situation arose the pay of the senior was immediately raised so as to be equal to that of the junior.

10. The applicant has also filed the guidelines (Annexure-G) dated 28th April, 1988 regarding promotion to senior scale posts circulated by the Ministry of Home Affairs to the Chief Secretaries of all States. Thus, the applicant has set ^{up} a case that the pay of the applicant should have been fixed at Rs.8000/- as per the Fourth Pay Commission report or in the alternative in the pay scale of Rs.7600-8000/-.

11. The respondents have contested the application and in their reply they have stated that the applicant drew the pay of the post to which he was appointed and he drew less pay only because he was posted to the post which carries less

pay. The seniority in all India gradation list does not confer the right of appointment to a particular post carrying a particular pay. The appointment is based on merit with due regard to the seniority as provided under the Rules. The respondents have cited, sub-rule (2A) of Rule 3 of the IPS (Pay) Rules, 1954 which lays down that "Appointment to the Selection Grade and to posts carrying pay above the time scale of pay in the Indian Police Service shall be made by selection on merit with due regard to seniority." As regards the pay of Rs.8000/- allowed to officers at the Centre, junior to the applicant, ^{it is stated} they drew that pay by virtue of their appointment to the post which carried a pay of Rs.8000/- and appointments to these posts are made on merits with due regard to the seniority. When the applicant joined the Central deputation post, he was not allowed less pay than the pay he was drawing prior to his appointment to the post and so Rule 9 as well as proviso to Rule 6 of the IPS (Pay) Rules, 1954 quoted by him are out of context. For the officers working at the centre, next below rule benefit is not admissible to them in supertime scale and above. The amendment in Schedule III(A) quoted by the applicant is stated to be for a post under the State Government and not under the Central Government. It is further stated that the seniority in All India Gradation list does not confer any right of appointment to a particular post carrying a particular pay and the appointment is based on merit with due regard to the seniority as provided under the Rules. In view of the above, it is stated by the respondents that the applicant is not entitled to any relief ^{is liable} and the application to be dismissed.

12. The learned counsel for the applicant also stated in OA that the applicant was appointed on deputation to the Railways as IG/RPF in November, 1983, and, then DG/RPF on 4th October, 1985. At the time when he was appointed as DG/RPF, with a fixed pay of Rs.3000 per month, he had no cause of grievance. His own pay was Rs.3000, and the pay of his junior appointed as DG/Madhya Pradesh was also Rs.3000. It has been further stated by the applicant in the application that the post of DG/Police, Madhya Pradesh has been put in the scale of Rs.7600-8000/-. The junior to the applicant in the MP Cadre have been working as DG in the Pay Scale of Rs.7600-8000 and applicant who has been certified to be fit to hold the post of DG Police, Madhya Pradesh, is entitled to emoluments in the pay scale of Rs.7600-8000, whether his services are utilised as DG/RPF or DG/Police Madhya Pradesh. The applicant has also filed a copy of the letter dated 12-6-1987 (Annexure J) written by Home Secretary, State of M.P. to Home Secretary, Government of India mentioning in the letter that if Shri Banerjee had been in the M.P. Cadre then he would have been drawing a pay of Rs.7600, in the pay scale of Rs.7600-100-8000. The learned counsel has also filed a letter dated 25-9-1987 (Annexure K) written by Shri V.K. Jain to Under Secretary, Railway Board in reference to the letter of the Railway Board dated 24/25-7-87 that the pay of Shri Banerjee was fixed on the recommendation of the Fourth Pay Commission at Rs.7600/- as put up for the post of DG/RPF. It is for the Railway Authorities to consider the fixation of higher pay of Shri S.P. Banerjee as personal to him in view of his seniority.

13. We have heard the learned counsel for the parties at length and have gone through the record of the case. The learned counsel for the applicant has relied on the doctrine of 'equal pay for equal work', inasmuch as the

✓ applicant has been working as Director General, RPF since November, 1985, but he has been given a fixed pay of Rs.7600 while the Director, CBI has been given a fixed pay of Rs.8000/- which in itself is discriminatory. Both belong to IPS service and are posted in the Central Organisations and he was senior to him. The argument of the learned counsel is mainly based on a number of authorities mainly relying on the case of Shri Randhir Singh Vs. Union of India, AIR 1982 SC 879. This case pertains to Constable Drivers and it was directed that they should be paid pay equal to the Drivers in RPF. However, in the present case, firstly, the applicant belonged to Madhya Pradesh cadre and secondly the posts in the Central Organisations under the Government of India are manned by persons belonging to IPS Cadre. There is selection on merit-cum-seniority.

14. The doctrine of 'equal pay for equal work' is not expressly declared as a fundamental right under the Constitution. But it is no more an abstract doctrine. Article 39(d) read with Articles 14 and 16 of the Constitution enjoin the State not to deny any person equality before law in matters relating to employment and this includes the remuneration. Where all conditions are equal and persons holding identical posts perform identical or similar duties under the same employer, they shall not be treated differently in the matter of their pay. The doctrine of 'equal pay for equal work' is not an abstract one, it is open to the state to prescribe different scales of pay for different posts having regard to educational/ qualifications, duties and responsibilities of the posts. The doctrine of 'equal pay for equal work' is applicable when employees holding the same rank, performing similar and responsibilities functions and discharging similar duties/ are treated

differently. The application of this doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay. Besides, Randhir Singh's case, the Hon'ble Supreme Court has also enforced the Doctrine of 'equal pay for equal work' in Dharmender Chamoli Vs. Union of India 1986(1) SCC 637, V.J. Thomas Vs. Union of India, AIR 1985 SC page 1124, Bhagwan Dass Vs. State of Haryana, AIR 1988 SC page 1504. In all these cases, there was a hostile discrimination between two sets of persons discharging the same duties and responsibilities and working under the same employer. All these persons are equal in respect of their qualifications, the manner of recruitment and the work which was being done by them. However, it has been observed in all these cases that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the post concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scales but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal and unreasonable basis, it will be violative of Articles 14 and 16 of the Constitution, Equality must be among the equals, unequals cannot claim equality.

18. In AIR 1988 SC page 1291, Federation of All India Custom and Excise Stenographers Association Vs. Union of India, the doctrine was not held applicable on the ground of the functional requirement of the work done, training and responsibility prescribed for the two posts. Again in State of U.P. Vs. J.P. Chaurasia, AIR 1989 SC page 19, the Hon'ble Supreme Court held that "primarily it requires among others evaluation of duties and responsibilities of the respective post. More often functions of two posts may appear to be the same or similar, but there may be

difference in degrees of 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 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." The same view has been expressed in Umesh Chand Gupta Vs. O.N.G.C., AIR 1989 SC 29 and in Tarsam Lal Gautam Vs. State Bank of Patiala & Ors., AIR 1989 SC 31. In J.P. Chaurasia's case as well as in Tarsam Lal Gautam's case (supra) there were two scales prescribed which were for consideration of the Hon'ble Supreme Court for similarly situated persons.

16. The main question now to be seen is that the applicant is equating various posts under Central organisations or Central Police Organisations contending that the Pay Commission has not correctly equated those posts. The applicant had come as DG/RPF prior to the implementation of the recommendations of the Fourth Pay Commission. The learned counsel for the applicant has relied on certain facts claiming equivalence to the post of Director CBI, BSF, CRPF and claiming a fix pay of Rs.8000 per month for DG/RPF. However, when the Pay Commission has already considered the matter and as held in the case of J.P. Chaurasia (supra), the work of the expert body cannot be taken up by the Tribunal in equating the posts and particularly in the present case where there is no data

available which should have been demonstrated by the providing the applicant by expressly/ particular sphere of work in each of those posts of Heads of the Department with which equivalence has been claimed. Thus the principle of equal pay for equal work cannot be applied to the present case.

17. Learned/further argued with some force that if the applicant had not been appointed as DG/RPF then the applicant in his own Madhya Pradesh Cadre would have been posted as D.G. Madhya Pradesh and in that event, his pay would have been in the revised scale of Rs.7600-8000 which is equivalent to the pre-revised scale of Rs.3000 which was the pay at that time drawn by D.G. M.P. When the applicant was working as D.G/RPF, the persons junior to him in the M.P. Cadre of IPS have been working as D.G., in the pay scale of Rs.7600-8000 and the applicant has been certified to be fit to hold the post of D.G. Police, M.P. so his emoluments cannot be less than that he would have got in the pay scale of Rs.7600-8000. A copy of the letter dated 12-6-1987 (Annexure J) written by Home Secretary State of M.P. to Home Secretary, Government of India mentioning in the letter that had the applicant been in the M.P. Cadre then he would have been drawing the pay in the scale of Rs.7600-8000 and at the relevant time i.e. 1987, his pay would have been Rs.7800. The learned counsel for the applicant has also filed a letter dated 25th September, 1987 (Annexure K) written by Shri V.K. Jain to Under Secretary, Railway Board in reference to the letter of Railway Board that the pay of the applicant was fixed on the recommendation of the Fourth Pay Commission by Rs.7600 as the pay for the post of D.G./RPF. The aforesaid letter further added that if the Railway considers the matter then the applicant can be given a personal pay. The post of D.G. M.P. is post of Schedule III(A) and the revised pay is Rs.7600-8000. In view of the above, the applicant has made out a case

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that in any case he is entitled to fixation of pay in the scale of Rs.7600-100-8000 w.e.f. 1-1-1986. Thus it is a case of wrong fixation and not a case of allowing equal pay for equal work.

We are therefore of the opinion that the applicant is entitled to the fixation of pay in the scale of Rs.7600-100-8000 w.e.f. 1-1-1986 and the application to this extent is allowed. Since the applicant has retired, he shall be paid all arrears of pay and revised retirement benefits within three months from the date of receipt of copy of this order. The other reliefs claimed by the applicant are disallowed.

The application is disposed of on the above line, leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)

MEMBER (J)

(P.C. Jain)
(P.C. JAIN)

MEMBER (A)