

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr.38/88

1. Raghu Pal Singh,
'ESSBEE APARTMENT'
6B/101, Saibaba Nagar,
Borivali(W)
Bombay -- 400 092.
2. Punarur Vyasa Achar,
8, Shiv Kunj, ~~Mar~~ Majas Road,
Jogeshwari(East),
Bombay - 400 060. and ors. .. Applicants

VS.

1. Union of India
2. Employees' State Insurance Corporation,
through
Chairman,
Employees' State Insurance Corporation,
Shrama Shakti Bhavan,
New Delhi - 1.
3. The Director General,
Employees' State Insurance
Corporation,
ESIC Building,
Kotla Road,
New Delhi - 110 002.
4. The Regional Director,
Employees' State Insurance Corporation,
ESIC Bhavan,
N.M.Joshi Marg,
Lower Parel,
Bombay - 400 013.

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman
Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.G.K.Masand
Advocate for the
Applicants.
2. Mr.V.S.Masurkar
Counsel for
Respondent No.1
3. Mr.A.I.Bhatkar
(for Mr.M.I.Sethna)
Advocate for
Respondents No.2 to 4.

JUDGMENT:

Date: 24-8-1991

(Per U.C. Srivastava, Vice-Chairman)

Writ Petition No.286 of 1983 filed

in the High Court of Judicature at Bombay is transferred under Section 29 of the Administrative Tribunals Act by the Bombay High Court to this Tribunal. On transfer the said Writ Petition is numbered as

Tr.Application No.38/88.

2. The applicants who are the employees of the State Insurance Corporation constituted under Employees' State Insurance Act and they have prayed that the Court be pleased to strike down by an appropriate order and direction the decision of the Respondents not to grant an appropriate standard scale of pay for the cadre of Managers Grade-II/ Deputy Managers/Insurance Inspectors for the period from 1.5.1966 to 31.12.1972 in lieu of the ad hoc unscheduled scale of Rs.250-445 not found in the report of the 2nd Central Pay Commission; also prayed for issue of a writ in the nature of mandamus or likewise for directing and/or requiring and/or compelling the respondents to grant for the above mentioned period either the scale of Rs.350-575 or Rs.325-575 or any other appropriate standard scale, not inconsistent, in straight equation, with the scale of Rs.550-900 granted by the subsequent Pay Commission from 1.1.1973 and they may be further directed to suitably fix the present pay of the applicants with effect from 1.5.1966 and the others in their cadre on the footing that their pay scale during the above mentioned period was as may be fixed pursuant to the directions given by this Court and they also claimed arrears.

3. The applicants have stated that when the Corporation was set up in the year 1948 the Managers Grade-II/Deputy Managers/Insurance Inspectors were in the scale of Rs.200-20-400 and some time in the year 1954 this scale was unilaterally reduced to Rs.175-10-275-350 with special pay of Rs.25/- to the Managers Grade-II/Deputy Managers and fixed conveyance allowance of Rs.25/- to Insurance Inspectors, which was unjustified,unfair,arbitrary,unjust and was discriminatory.

This led to discontent among the employees and a demand for upward revision of scale was made. At about same time the Central Pay Commission was also constituted to look into the duties and responsibilities of the central government employees and to recommend scale of pay of each category of the government servants. The employees of the Corporation was not covered under the terms of the Pay Commission nor were the employees represented before the Central Pay Commission as such their case was not looked into by the said Pay Commission. The Pay Commission submitted its report in the year 1959 and the Corporation authorised its Director General to grant pay scales to the employees of the Corporation from the schedule of the Second Pay Commission Report as were made applicable to the Central Government servants. But so far as the cadre to which the applicants belong and referred to above no parallel could be found in the report of the Commission as such they were not put in any appropriate scale. Although all the other employees of the Corporation were placed in corresponding standard of scales of pay the cadre referred above to which the applicants also belong was put in the scale of Rs.250-445 by merging the pay and dearness pay of pre-existing scale of Rs.175-350 giving an impression that a revised scale was granted. According to the applicants the said scale was not the scale recommended by the Pay Commission and was not a standard scale nor was it commensurate with the duties and responsibilities performed by the officers in the cadre. This gave rise to discontent and ultimately in 1962 a pay fixation sub-committee was appointed to examine duties and responsibilities and workload of various categories and to recommend specific scale for them within the framework of the recommendation of the 2nd Central Pay Commission. The pay fixation sub-committee after long hearing came to the conclusion that in relation to the posts of Insurance

Inspectors in the Corporation the closest equivalence would be the posts of Inspectors (Labour Enforcement Officers) in the organisation of the Chief Labour Commissioner (Central) carrying pay scale of Rs.350-25-575 and accordingly recommended this grade to them. In the case of Managers/Deputy Managers the committee recommended grant of special pay of Rs.25/- per month. These recommendations were accepted by the Corporation without any reservation and various other scales recommended by the pay fixation sub committee to all other categories which were already in the standard scales of central government employees from 1st of July, 1959. Considerable correspondence were started between the applicants and corporation but ~~maxi~~ their proposal was not acceptable to the Corporation on the grounds (i) that the post of Insurance Inspectors in the E.S.I. Corporation was not equivalent to the posts of Labour Enforcement Officers in the Organisation of the Chief Labour Commissioner (Central) and (ii) that the qualifications of and experience prescribed for the post of Labour Enforcement officers were different and higher than those prescribed for the post of Insurance Inspectors. Their Association also submitted a detailed memorandum in this behalf.

Ultimately in the year 1971 instead of approving the scale of Rs.325-575/350-575 to the cadre of Managers Gr. II/Dy. Managers/Insurance Inspectors in the Corporation merely raised the special pay of Rs.25/- p.m. attached to the post of Managers Grade-II and Deputy Managers to Rs.50/- per month from 1st October, 1971 by way of an adhoc arrangement. This special pay was not counted as pay for purpose of fixation of pay on promotion to the next higher grade. The dispute continued on and representation after representation were made.

In 1975 the cadre of Manager Grade-II/ Insurance Inspectors was placed in the scale of Rs.550-900 from 1-1-1973 which was one of the scheme prescribed by the IIIrd Pay Commission. The job Evaluation and Equation sub committee of the Commission recommended that this scale was appropriate scale with which this cadre could be equated. The recommendations of the sub-committee were accepted by the government and the Corporation thereafter took up a stand that as the scale of this particular cadre was revised the question of revising the scale for this particular cadre for the period prior to 1-1-1973 did not arise. The sub-committee of Job Evaluation and Equation had also recommended that the scale of pay of Rs.550-900 should be fixed with effect from 1.1.1973, the scale of Rs.325-575 should be made applicable to the said cadre with effect from 1.5.1966 and the arrears paid to the employees.

The respondent Corporation has resisted the claim of the applicants on the ground that it was time barred as the decision was known to the applicants as far as back in the year 1966 and they ~~failed~~ filed the petition on 2-2-1983. It has been stated that the posts of Insurance Inspectors were originally created in the grade of Rs.250-600. In 1952 a new grade of Inspector was introduced in the scale of pay of Rs.200-400. The scale of pay of the second post of Inspector was downgraded to Rs.175-350 in 1954, keeping in view the scale of pay prescribed for the posts carrying similar duties and responsibilities under the Central Government. It was further revised to Rs.175-375 with a special pay of Rs.25/-p.m. for Managers grade II with effect from 1-1-1958. The employees of the ESI Corporation are generally treated at par with the

central government employees in the matter of pay and allowances and that is why it has been the practice to revise the scale of pay of the employees of the Corporation along with the revision of scale of pay of the Central Government employees. In view of the revision of pay of the central government employees with effect from 1st July, 1959 the scale of pay of the employees of the ESI Corporation was also revised and the revised scale of pay was to be arrived by merging the pre-revised scale of pay and dearness pay. Accordingly the pay of the Inspector was revised to Rs.250-455 with a special pay of Rs.25/- for Manager Grade II.

It is this discontent which led to set up a sub-committee in 1962 for examining the duties and responsibilities and recommending specific scales of pay within the frame work of the recommendations of the Second Central Pay Commission. The sub-committee had recommended the revised pay scale of Rs.350-575 for the post of Insurance Inspectors. The matter was referred to the government and it was considered by the government keeping in view the duties and responsibilities of the post and the scale of pay of corresponding posts under the Government and the employees of Provident Fund organisation but it was not found possible to accept it for the two reasons viz. (i) the post of Labour Enforcement Officers under the central government were in the scale of pay of Rs.350-575 but the duties and responsibilities of the incumbents to these posts were found to be comparatively higher than those of Insurance Inspectors in the ESI Corporation, and (ii) the posts of P.F. Inspector in the EPF organisation were in still lower scale of pay of Rs.230-425 as compared to the sanctioned scale of pay of Rs.250-445

for the Insurance Inspectors, although according to a Committee of the ESI Corporation Section 13 of the EPF Act confers more powers on the EPF Inspectors as compared to powers conferred on the Insurance Inspectors under Section 45 of the ESI Act.

The scales of pay of the posts under the Central Government were further revised w.e.f.1-1-1973 in pursuance of the recommendation of the IIIrd Pay Commission. The ESICorporation were also revised the scale of pay keeping in view the revised scales of pay recommended by the Pay Commission. In the case of Inspector the government took a decision to give higher scale of pay of Rs.550-900 with a view to upgrade the status of Inspectors and to attract suitable talent for direct recruitment. There were similar upgradations of scale of pay of certain other posts and the revised scale of pay given to those was, therefore, higher than the normal replacement scale admissible for the posts. But that did not entitle them to claim higher scale of pay for the past period. The recommendation of the committee regarding payment of a particular grade from 1-5-1966 to 31-12-1972 was not accepted by the Government. Another sub committee of the Corporation had reiterated the same recommendation with the modification that there may be only ~~xxxix~~ notional fixation of pay in the revised scale of pay but no arrears may be allowed to the incumbents of the post for the past period upto 31-12-1972. This was also not accepted by the Government.

On behalf of the applicants it was contended that ultimately the Corporation and the Government yielded and they accepted the grades more or less as claims were granted. While granting the claim of the pay scale a discrimination has been done ~~to the government servants~~ inasmuch as it was not given effect from the date it was given to government servants but it was given ~~given~~ effect

from a later date. It is to be seen that after adjudication, consultation and other proceedings and other recommendations and report the government agreed to give a particular scale to some of the officers in lieu of the particular scale some allowance were also given. It appears that at no point of time the question as to whether a particular post is equivalent to a post held by the government servant and the duties and responsibilities are the same was decided. The doctrine of 'Equal pay for equal work' is not abstract one, it is open to the State to prescribe different scales of pay for different post having regard to the educational qualifications, duties and responsibilities of the post. The principle of 'Equal pay for equal work' is applicable when employees holding the same rank perform similar functions and discharge similar duties and responsibilities are treated differently. The application of the doctrine would arise where employees are equal in every respect but they are denied equality in matters relating to the scale of pay. It appears that in this case this was not analysed but the government and the Corporation agreed to give the same pay scale. In the case of Federation of All India Customs and Central Excise Stenographers (Regd) v. Union of India, 1988(3)SCC 91 the claim of personal assistants and stenographers attached to the heads of departments in the Customs and Central Excise department of the Ministry of Finance for equal pay in parity with personal assistants and stenographers attached to the Joint Secretaries and officers above them in the Ministry of Finance was rejected by the Supreme court on the ground of the functional requirement of the work, training and popularity prescribed for the two posts.

In the State of U.P. v. A.P. Chourasia the ~~Supreme~~ Court held that even different pay scales in the cadre of Joint Secretaries working in the same office was held good.

There the question was whether it was permissible to have two different pay scales in the cadre of Joint Secretaries for persons performing the same duties and having the same responsibilities. After taking into consideration the various decisions the Court held that the principle of equal pay for equal work had no mechanical application in every case of similar work. Articles 14 and 16 permits reasonable classification founded on rational basis and it is therefore permissible to provide two different pay scales in the same cadre on the basis of selection with due regard to the seniority. The Court held that in such a situation the principle of equal pay for equal work did not apply. Here in the instant case ~~hardly~~ the principle had been applied but on different date obviously as the Corporation employees were not the central government employees for whom the pay commission was made but they were employees of the instrumentality of the state and it was for the central government to extend the same and the central government it appears that after reluctance and deliberations applied the scale broadly to certain categories of employees on later date which it was competent to do so as the Corporation was also bound by it and accepted it. The Corporation by itself could not have made this financial commitment.

On behalf of the applicant reliance was placed on the case of Supreme Court decision in the case of Purushottamlal v. Union of India, AIR 1973 SC 1088. The head note of which states that implementation of the revised pay scales in a particular category of servants from a date later than that recommended by the Pay Commission and thus non-implementation of its

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report only in respect of these persons amounts to violation of Arts.14 and 16 of the Constitution of India. In this case, the head note, it appears, does not correctly reflect as to what was decided in this case. In the said case the employees of the Forest Research Institute and Colleges, Dehra Dun were a particular class of employees. The pay commission set up by the government known as Second Pay Commission it was held that the revision of the pay scale will take effect from the date of issue of this order and that the refixation of the pay of the incumbents will be done under the Fundamental rules. It was stated on behalf of the government that revision of pay scale in respect of those employees may be done on the basis of duties attached to those posts and not on the basis of the recommendations of the pay commission. The Supreme Court held that as a matter of fact the terms of reference are wide and if any category of government servants was excluded material should have been placed before the government. The Commission had stated that for the purpose of their enquiry they had taken all the persons of the central government or holding civil post and paid out of the consolidated fund and admittedly the petitioners were also getting out of the consolidated fund. The Supreme Court then held that reference in respect of ~~the~~ all the government employees and as such it was to be implemented in respect of all the government servants. Precisely the question as to whether it could be implemented in respect of any particular class of employees on one date or the other was not before the Supreme Court nor was the question as to whether the implementation would be in respect of government servant and employees of instrumentalities of the State in respect of which the pay commission's report

was made applicable to a particular extent which will be placed on the same footing. As such ^{that} case is not of much assistance in the present case.

Learned counsel for the applicants cited another judgment of the Kerala High Court in the case of N. Sukumaran v. State of Kerala, 1986(1) AISLJ 337. It was a case of pay scale of the District Judges. In the said case the court pointed out that it was an unusual case as the District Judges were singled out by comparatively unfavourable treatment by the Chandrabhanu Commission. The government practically accepted the 1974 pay commission report that the District Judges should get the same pay scale as heads of major departments and few of them placed on higher grade but the 1978 commission practically degraded the District Judges and took away part of the benefits the District Judges were enjoying. The recommendations were initially accepted by the government. The anomaly in the pay scale was removed but arrears were denied. The Court held that it was arbitrary and they are entitled to ~~to~~ backwages also. This case has also of no help to the present case.

Obviously the government could have granted the pay scale to them from a particular date. But in this case after taking into consideration the totality of the circumstances the government did not accord approval to pay with retrospective effect and granted the said pay scale after much pressure and recommendations. As these employees would have been the servants of the government itself obviously the government could not have created disparity. But in the present case the employees are of the Corporation and duties and responsibilities may not be the same though the nomenclature may be somewhat similar. As such it is difficult to hold that the grant of pay scale with effect

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from a later dated is arbitrary or discriminatory. However, we would not hesitate in adding that the government may ~~be~~ still consider ^{this} ~~or~~ in totality and in case ~~it is~~ found ~~it is~~ possible to give them pay scale from back date, it is for the Corporation to do so.

With the above observation this application is dismissed. There will be no order as to costs.


(M.Y. PRIOLKAR)

Member(A)


(U.C. SRIVASTAVA)

Vice-Chairman