

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 1706/2012

Reserved on: 12.05.2016
Pronounced on: 23.05.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Babu Lal Mitharwal
S/o Shri Surja Ram
R/o Vill. & P.O. Sihodi,
Tehsil – Shri Madhopur,
Distt. Sikar, Rajasthan ... Applicant

(Through Shri P.R. Kovilan Poongkuntran, Advocate)

Versus

Union of India, through

1. Its Secretary
Ministry of Home Affairs
North Block, New Delhi-110001
2. Union of India
Through its Secretary,
Ministry of Finance,
North Block, New Delhi-110001
3. The Commissioner of Police,
PHQ, MSO Building, IP Estate,
New Delhi ... Respondents

(Through Dr. Ch. Shamsuddin Khan, for respondents 1&2
Shri B.N.P. Pathak, for respondent 3)

ORDER

Mr. P.K. Basu, Member (A)

The applicant is a Constable (Executive) in Delhi Police. His pay scale in Delhi Police was Rs.3050-4590 (pre-revised), which

was revised to Rs. 5200-Rs. 20200 with the Grade Pay of Rs.2000/-.. After implementation of 6th Central Pay Commission (CPC) recommendations from 1.01.2006, the applicant is drawing basic pay of Rs.7830/- with a Grade Pay of Rs.2000/-. Vide order dated 15.12.2011, the Government of Punjab has revised the pay scale of Constable (Executive) in Chandigarh Police with effect from 1.12.2011 in Pay Band of Rs.10300-34800 with a Grade Pay of Rs.3200/- and the initial pay being Rs. 13500/-. Vide order dated 14.02.2012, the Chandigarh Administration has revised pay scales of certain categories of posts in the police department adopting Government of Punjab order dated 15.12.2011.

2. The applicant is aggrieved that while the pay of Constable in Chandigarh Administration has been revised as aforementioned, he continues to be in Pay Band of Rs.5200/- with Grade Pay of Rs.2000/- and has filed this OA seeking the following reliefs:

“8.1 To direct the respondents to consider for the grant of pay scale PB Rs.10,300-34800/- with a grade pay of Rs.3200 and the initial pay being Rs.13,500 and to grant the same w.e.f. 01.12.2011 along with all arrears of pay.”

3. The grounds on which the applicant seeks the above relief are as follows:

(i) It is argued that in both the cases of Constable in Delhi Police and Constable in Chandigarh Police, the holders of these posts have to undergo efficiency

test, physical measurement test and interview with the same physical standard for the purpose of qualification. In fact, in case of Delhi Police, for the written test, time duration is 1-1/2 hours and the paper carries 100 marks whereas in the case of Chandigarh Police, time duration is 1 hour and the paper carries 85 marks, which indicates that the standard of selection in Delhi Police is more strict. It is further argued that Delhi Police personnel is on a higher pedestal owing to arduous duties, difficult tasks and enhanced risks which a Delhi Police Constable takes in discharge of his duties as it has to cater to the need of providing protection and security to the national leaders, VIPs and the presence of foreign missions and diplomats in large number as well as law and order situation in connection with demonstrations, processions, national functions such as Republic Day, Independence Day and so on.

- (ii) That the Equal Remuneration Act 1976 provides for payment of equal remuneration and prevention of any kind of discrimination and that there cannot be different pay scales for different employees carrying out the same work. The learned counsel also referred to Schedule 7 List 2 Entry 2 of the Constitution of India. Our attention was further drawn to Articles 239, 239A and 239AA in Chapter VIII, which deals with the Union Territories. He drew

our specific attention to Article 239AA – Special provisions with respect to Delhi – and referred to sub-section 3 (a), which provides as follows:

“(3)(a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18.”

In this regard, he referred to entries 1 and 2 of the State List and 2A of the Union List, which provide as follows:

“1. Public order (but not including [the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).

2. Police (including railway and village police) subject to the provisions of entry 2A of List I.”

....

“2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.”

Learned counsel stated that the above provisions make it clear that Delhi Police does not come under the jurisdiction of the Government of National Capital Territory of Delhi

(GNCTD) but under the Union of India in the Ministry of Home Affairs (MHA). It is argued that for all Union Territories and Delhi, the control of police is with the MHA and, therefore, there should be parity in pay scales of Constables in Delhi Police and all Union Territories.

(iii) The 6th CPC in para 7.19.50 had recommended under chapter 7.19 for MHA Pay Band and Grade Pay of Constable in PB-1 with Grade Pay of Rs.2000/-. Under separate chapter 7.57, there is reference of Union Territories i.e. Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Lakshadweep, National Capital Territory of Delhi and Puducherry, of which GNCTD and Puducherry have legislatures, Council of Ministers and Consolidated Funds. The rest of the Union Territories are without legislature. In para 7.57.6, it is mentioned that Delhi Police is under the administrative control of MHA and that all issues relating to Delhi Police are discussed in the chapter on MHA. Presently, pay scales in other UTs vary. The Pay Commission also noticed that job profile of police personnel in all UTs other than Delhi is similar. It, therefore, recommended the pay scale of Rs.3200-4900 with Grade Pay of Rs.2000/- also for the UTs just as it had been done for Delhi Police. It is, therefore, argued that even the 6th CPC had treated the Constables in Delhi Police at par with

Constables in UTs including Chandigarh. Therefore, since the pay scale of Chandigarh Police has been enhanced to Rs.10300-34800, there is every justification for upgradation of pay scale of Constables in Delhi Police also.

(iv) Learned counsel drew our attention to notification dated 13.01.1992 of the MHA notifying the conditions of service of Union Territory of Chandigarh Employees Rules 1992 through which conditions of service of persons appointed to the Central Civil Services and posts in Groups A B, C and D under the administrative control of the Administrator of Union Territory of Chandigarh shall, subject to any other provision made by the President in this behalf, be the same as the conditions of service of persons appointed to the corresponding posts in Punjab Civil Services and shall be governed by the same rules and orders as are for the time being applicable to the latter category of persons. In the explanatory memorandum given to this rule, it is stated that there has been a demand for the grant of Punjab Pay Scales based on the third Punjab Pay Commission's recommendations instead of Central/ Other Union Territory's pay scales and the said demand of Union Territory employees was considered carefully and it was decided to grant the

Punjab Pay scales to the employees of the Union Territory Administration with effect from 1.04.1991.

It is argued that given the parity of situation, the same pay scale should be made applicable to Delhi Police as has been made applicable to Chandigarh Police and no discrimination can be made by the Union of India between the Union Territories.

4. Learned counsel for the respondents state that Constables of Delhi Police have been granted the pay scales as recommended by the 6th CPC and their pay fixed accordingly and this is not only applicable to Constables but all Delhi Police personnel. It is further mentioned that Constables of Chandigarh Police are governed by Punjab Pay Commission, adopted by the Chandigarh Administration and presently the Constables of Chandigarh Police are placed in Pay Band of Rs.10300-34800 with a Grade Pay of Rs.3200/-. It is further clarified that the pay scales of Delhi Police personnel are prescribed and sanctioned by the Government of India whereas the pay scales of Chandigarh Police are governed by the Government of Punjab.

5. Learned counsel for respondent no.3 added that pay scales of Delhi Police are decided by MHA. He also drew our attention to Annexure R-5 to the reply affidavit filed by respondent no.3. Annexure R-5 is an office order dated 2.03.2001, which has been passed in compliance of the order of this Tribunal's order dated 8.01.2001 in OA 218/2000, where the Tribunal directed the

respondents to constitute a Special Committee, drawing representatives from the Union of India, the GNCTD and the Commissioner of Police, Delhi to make recommendations with regard to pay scales of Head Constables of Delhi Police with effect from 1.01.1996 and after the recommendations of the 5th CPC, the respondents must take final decision thereon expeditiously. This is a detailed order which states that the respondents did constitute a High Level Committee and examined the Committee's report, which had concluded that there was no justification to grant higher scale of pay to Head Constable of Delhi Police. Through this order, the respondents had accepted the recommendations of the Committee and communicated it to all the applicants in OA 218/2000 (supra). It is stated that though it pertained to the pay scale of Head Constable, since the pay scale of Head Constable was not disturbed, the pay scale of Constables also cannot be upgraded as that would disturb inter-se position in the cadre.

6. In this matter, initially we had deemed it necessary to hear the learned ASG on the issue involved. However, the learned ASG was unable to appear before us and, therefore, this issue was finally heard by us with Dr. Ch. Shamsuddin Khan appearing for respondent no. 1 and 2 and Shri B.N.P. Pathak, for respondent no.3.

7. The sole argument of the applicant is that the Police Administration of Union Territories as well as Delhi Police comes under the jurisdiction of MHA. The basic qualification, method of

recruitment, level of physical standard etc. being the same for Delhi Police and Chandigarh Police, it is argued that no discrimination can be made. Moreover, as pointed out by the learned counsel for the applicant, in fact, the written test is more difficult in Delhi Police than Chandigarh Police. It is further argued that nature of job of Delhi Police is much more arduous as compared to Chandigarh Police. It is also argued that 6th CPC while recommending pay-scales for Delhi Police constables and Union Territory constables in separate chapters had also recommended the same Pay Band and Grade Pay, which shows that the 6th CPC also accepted the contention that both deserved to be in the same pay scale. However by adopting pay scales of Punjab Government through 1992 Rules and thus applying the Punjab Police constable pay scale to the Chandigarh Police, this anomaly and discrimination has been created, which needs to be rectified.

8. Per contra, the respondents argument is that the Delhi Police is governed by the recommendations of the 6th CPC as applicable to all Central Government Employees and since the Delhi Police comes under the MHA, the same has been made applicable to them. In contrast, Chandigarh Police is governed by the recommendations of the Pay Commission of Government of Punjab as borne out by the 1992 notification as well as letter dated 14.02.2012 (Annexure A-1) issued by the Finance Department of Chandigarh Administration. So, according to them, the two are not comparable.

9. We also take note of the law cited by the Hon'ble Supreme Court in **Union of India & Another Vs. P. V. Hariharan & Anr.** SCC (L&S) 838 and **Union of India & Ors. Vs. Makhan Chandra Roy** AIR 1997 SC 239, where it has been held that matter of pay scales lies with the Expert Bodies, like Pay Commission and it is not for the Courts or Tribunals to fix the pay scales. It should be best left to be decided by expert bodies like Pay Commissions.

10. The 6th CPC has recommended pay scales for Central Government Employees which, for reasons recorded above, apply to Delhi Police as well. Through 1992 notification and decision of the Punjab Government, the Chandigarh Administration awarded the pay scale depending upon recommendations by the Pay Commission set up by the Government of Punjab. Moreover, the applicant has not challenged the notification dated 13.01.1992 which is the genesis of awarding higher pay scales to the Constables in Chandigarh Police.

11. In view of above, we do not find any merit in this OA and it is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

/dkm/