

A

UNION OF INDIA AND ANR.

v.

P.V. HARIHARAN AND ANR.

MARCH 12, 1997

B

[B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

Service law:

C

Pay scale—Categorisation of posts vide Notification—Respondent having pay scale of Group D—Tribunal holding that his post of skilled-group falls in Group C, as such entitled for group C pay scale—Held, Tribunal's order for fixing/enhancement of the pay scale is unsustainable in law, as classification of posts does not result in change of pay scale—Plea of equal pay and equal work has not been decided by the Tribunal—Hence remitted back for proper order - CCS (CCA) Rules 1965, R.6.

D

Pay scale—Scope of judicial review—Unless a clear-cut case of hostile discrimination, there should be no judicial interference with the pay scale.

Administrative Tribunal Act, 1985—Proper bench—For the claim to higher or enhanced pay scale—Bench comprising of at least one Judicial member.

E

The respondent was a Tool Room Assistant in the Integrated Fisheries Project (IFP), a wing of the Fisheries Department and was having a pay scale of Rs. 800. 1150, as prescribed by the 4th Pay Commission.

F

The Central Government vide its Notification under Rule 6 of CCS (CC&A) Rules, classified the various posts into Groups A, B, C and D. Group C comprised central civil posts "carrying a pay scale with a maximum of over Rs. 1150 but less than Rs. 2900". Group D comprised civil posts "carrying a pay scale, the maximum of which is Rs. 1150 or less".

G

The respondent filed an Original Application before the Central Administrative Tribunal that his post came under the "skilled" group and as per the Notification this category was placed in Group C, as such he entitled for the pay scale of Rs. 1150-2900. The Tribunal allowed the application. Hence, this appeal.

H

Allowing the appeal, this Court

HELD : 1.1. The pay scale of Tool Room Assistant in IFP was Rs. 1150 i.e. the maximum of the said pay scale was not "over Rs. 1150" so as to fall within Group-C. The post properly falls under Group D because it carried a pay, the maximum of which was "Rs. 1150 or less". "Over Rs. 1150" means Rs. 1151 and above. "Rs. 1150" cannot be characterized as "over Rs. 1150". The post, therefore, properly fall under Group D and not under Group C.

[1052-G-H, 1053-A-B]

1.2 The classification of posts cannot result in change of pay scale. Pay scales prescribed for each post by the Government and were done/fixed on the basis of recommendations of a pay Commission or a similar expert body. Classification of posts has nothing to do with fixation of pay scales, it only classifies posts into several grounds based upon the pay scales already fixed. Classification and prescribing pay scales for several posts are two different and distinct functions. So, the order passed by the Tribunal is wholly unsustainable in law and set aside. [1053-A-D]

2. As regards the plea of "equal pay and equal work" is concerned, Tribunal has not dealt with it. It is, therefore, remitted back to the Tribunal for proper disposal according to law. [1053-C-E]

3. Tribunals are quite often interfering with pay scales without proper reason and without being conscious of the fact that fixation of pay is not their function. It is a function of the Government, which normally acts on the recommendation of a Pay Commission, which goes in the problem at great depth and happens to have a full picture before it and is the proper authority to decide upon this issue. The Tribunal should exercise due restraint in the matter. Change of pay scale of a category has a cascading effect and has a serious impact on public exchequer. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. It would be in the fitness of things if all matters relating to pay scales, i.e. matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by the Bench comprising at least one Judicial Member.

[1053-E-F, 1053-F-H, 1054-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7127 of 1993.

From the Judgment and Order dated 23.7.92 of the Central Administrative Tribunal, Ernakulam in O.A. No. 391 of 1991.

A S.N. Terdol and A.S. Rawat for the Appellants.

A.S. Nambiar and P.K. Manohar for the Respondents.

The Judgment of the Court was delivered by

B **B.P. JEEVAN REDDY, J.** This appeal is preferred against the judgment of the Central Administrative Tribunal, Ernakulam Bench, allowing O.A. No. 391 of 1991 filed by the respondents herein.

C The respondents are Tool Room Assistants in the Integrated Fisheries Project (I.F.P.) which is a wing of the Fisheries department, the other wing being Central Institute of Fisheries Nautical and Engineering Training Department (CIFNET). The pay-scale of Tool Room Assistants in I.F.P. was initially Rs. 85- 128, revised to Rs. 210-290. The IVth pay Commission prescribed a uniform pay scale of Rs. 800-1150 for two pre-existing pay scales, viz., Rs. 210-270 and Rs. 210-290. The respondents thus
D came into the pay scale Rs. 800-1150.

The Central Government issued a notification under Rule 6 of CCS (CC&A) Rules classifying various posts into Groups A, B, C and D. Group-C comprised Central civil posts "carrying a pay or a scale of pay with a maximum of *over Rs. 1150* but less than Rs. 2900". Group-D
E comprised civil posts "carrying a pay or a scale of pay, the maximum of which is *Rs.1150 or less*". It is stated by the respondents that their post comes under "skilled" group and that as per the Notification aforesaid, this category is placed in Group-C. Reliance is placed upon Annexure A-8 to the writ petition which was a list of names of the posts in the Integrated
F Fisheries department. Item 58 of the said List, it was stated, includes the post carrying pay scale of Rs. 210-290 (which scale was later revised to Rs. 800-1150)) in Group-C. The appellants, who were respondents in the Original Application, opposed the respondents' claim. The Tribunal held that inasmuch the post held by the respondents is included in Group-C,
G they are entitled to the pay scale of Rs. 1150-2900. The Original Application filed by the respondents was allowed accordingly.

We are unable to appreciate the reasoning or approach of the Tribunal. The pay scale of Tool Room Assistant in I.F.P. is Rs. 800-1150. In other words, the maximum of the said pay scale is not "over Rs. 1150"
H so as to fall within Group-C. The post properly fell under Group-D

because it carried a pay, the maximum of which was "Rs. 1150 or less". A
"Over Rs. 1150" means Rs. 1151 and above. "Rs. 1150" cannot be charac-
terized as "over Rs. 1150". The said post, therefore, properly fell under
Group-D and not under Group-C. Assuming that the said post was men-
tioned under Group-C, it may be - or may not - an error. What is material B
is that the classification cannot result in change of pay scale from Rs.
800-1150 to Rs. 1150-2900. This is simply unimaginable. Pay scales are what
are prescribed for each post by the government which is very often done
on the basis of recommendations of a Pay Commission or a similar expert
body. Classification of posts has nothing to do with fixation of pay scales;
it only classifies posts into several grounds based upon the pay scales
already fixed. Classification and prescribing pay scales for several posts are C
two different and distinct functions. The Tribunal's order is, in our opinion,
wholly unsustainable in law. The reasons given in support of the impugned
order are ambiguous and vague. The impugned order of the Tribunal is
accordingly set aside. Sri Nambiar, learned counsel for the respondents,
however, submitted that the respondents had also raised the plea of "equal D
pay for equal work" on the basis of the pay scale granted to Tool Room
Assistants in the CIFNET, but that the Tribunal has not dealt with it. We,
therefore, remit the matter to deal with the said ground according to law,
and pass final orders in the Original Application.

Before parting with this appeal, we feel impelled to make a few E
observations. Over the past few weeks, we have come across several
matters decided by Administrative Tribunals on the question of pay scales.
We have noticed that quite often the Tribunals are interfering with pay
scales without proper reasons and without being conscious of the fact that
fixation of pay is not their function. It is the function of the Government F
which normally acts on the recommendations of a Pay Commission. Change
of pay scale of a category has a cascading effect. Several other categories
similarly situated, as well as those situated above and below, put forward
their claims on the basis of such change. The Tribunal should realise that
interfering with the prescribed pay scales is a serious matter. The Pay G
Commission, which goes into the problem at great depth and happens to
have a full picture before it, is the proper authority to decide upon this
issue. Very often, the doctrine of "equal pay for equal work" is also being
mis-understood and mis-applied, freely revising and enhancing the pay
scales across the board. We hope and trust that the Tribunals will exercise
due restraint in the matter. Unless a clear case of hostile discrimination is H

- A made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e., matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising atleast one Judicial Member. The Chairman of the Central Administrative Tribunal and the Chairman of the State Administrative Tribunals shall consider issuing appropriate instructions in the matter.
- B

B.K.S.

Appeal allowed.