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Sunil Kumar and Others Vs. UOI and Others

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Court : Delhi

Decided On : Sep-21-2015

Judge : S. Ravindra Bhat &Amp; the Honourable Ms. Justice Deepa Sharma

Appeal No. : W.P.(C) Nos. 1358 & 3829 of 2014 & C.M. No. 4627 of 2015

Appellant : Sunil Kumar and Others

Respondent : UOI and Others

Judgement :

S. Ravindra Bhat, J.

1. In these two writ petitions, identical reliefs are sought: in W.P.(C) 1358/2014, the petitioners, working as Combatised Staff Nurses (holding the rank of Sub-Inspector [SI]) seek parity of pay with Non-Combatised Staff Nurses. In W.P.(C) 3829/2014, the petitioners seek similar relief in the form of parity with Nursing Sister, in the grade pay of Rs. 4600/- (PB-2) in the pay scale of Rs. 9300/-34800/- of the Indo Tibetan Border Police Force (ITBP) in the case of all petitioners, except Petitioner Nos. 10,12,18,19 and 20- in the case of the latter, they seek the grade pay of Rs. 4800/-. The ITBP Petitioners are also working as Nurses. Both complain that their employers have acted arbitrarily in denying them a normal replacement scale pertaining to Category S-10 after the Central Civil Services (Revised Pay) Rules, 2008, (2008 Rules) by granting them a lower grade. They say that given the arduous nature of their duties of Staff Nurses entitles them to be

placed in Pay Band-2 with Grade Pay of Rs. 4600/- and Nursing Sisters drawing Rs. 5500-9000 to be placed in Pay Band-2 with Grade Pay of Rs. 4800/-.

2. The CRPF has both Combatised and Non-Combatised Staff Nurses. Before 01.01.2006 both categories of Nurses were being paid Nursing Allowance at the rate applicable to Nursing personnel of Central Government Hospitals. Then, Combatised Staff Nurses like the Petitioners were drawing a higher pay in the scale of Rs. 5500-175-9000/- while their Non-Combatised counterparts, i.e. Staff Nurses in CRPF were placed in a slightly lower pay scale of Rs. 5000-150-8000/-. The Petitioners rely on the extracts of Paras 1.2.18, 3.6.16, 3.8.1, 3.8.3(e) and 3.8.15 of VIth Central Pay Commission (hereafter VIth PC) Report. The Petitioners explain that differential pay whereby combatised nurses were given slightly higher pay is because they were trained for handling arms and they are expected to maintain high standards of physical fitness and are posted in field areas, as compared with non-combatised staff nurses.

3. It is argued that after implementation of the 2008 Rules, all Staff Nurses in CRPF were given the normal replacement scale in terms of the special recommendations for Nursing Staff. This led to representations by all staff nurses. The third respondent by order dated 18.06.2010 enhanced the pay of only Non-Combatised Staff. Combatised Staff Nurses were informed that the matter was still under consideration. By a letter dated 10.09.2013 the CRPF Petitioners were informed that pay of only Non-Combatised Staff Nurses working in CRPF had been enhanced.

Petitioner's Contentions

4. Counsel for the CRPF staff nurses submitted that granting revision and pay relief in accord with the VIth PC recommendations only to Non-Combatised staff nurses, while denying it to Combatised staff nurses is discriminatory. Stressing that before the report and recommendations as well as the 2008 Rules, in fact the Combatised staff nurses were given slightly higher pay, it was urged that denying parity was indefensible. At the very outset it should be noted that in writ petition, in line with the position as it existed before the 2008 Rules, the petitioners prayed for the upgraded pay-scale of Rs. 7500-12000 and Grade Pay of Rs. 4800, however

in the course of their arguments limited the relief prayed for to a Grade Pay of Rs. 4600, the same as that of Non-Combatised staff nurses under the VIth PC. Ms. Rekha Palli, learned senior counsel relied upon recommendations of the VIth PC report and urged that if the Central Government felt that there was a need to depart from it, *vis-a-vis* combatised nurses, some reasons germane to the subject had to be forthcoming. Learned senior counsel emphasized that combatised staff nurses are made to face more hardship and are required to discharge responsibilities under more arduous conditions than non-combatised nurses. In addition, they have to undergo arms training and bear arms whenever required. These features have remained unchanged. Therefore, denying parity with non-combatised staff nurses, is unjustified and discriminatory.

5. The CRPF petitioners argue that the Respondents have not denied the fact that prior to 01.01.2006, Combatised Staff Nurses working in CRPF were drawing higher pay than the Non-Combatised Staff Nurses working in CRPF and, therefore, there is no justification to now bring down their pay scale and status *vis-a-vis* the Non-Combatised Staff Nurses in CRPF, especially when VIth PC has specifically recommended a higher pay structure for Nursing and Para-medical staff.

6. It is submitted that the comparison of SI/Staff Nurses with SI/GD is even otherwise not justified as not only their qualifications but even their promotional prospects are totally different. It is submitted that the SI/GD are able to earn their promotion as Inspector in 4-6 years whereas a SI/Staff Nurse gets a promotion after more than 18 years. It is submitted that the petitioners are entitled to receive pay in accordance with the specific recommendations of VIth CPC for Nursing Staff and it is, therefore, prayed the Writ Petition be allowed with costs.

7. The ITBP Petitioners, are 20 in number. Petitioner Nos.1 to 19 were directly recruited as Sub-Inspector (Nurse) in ITBP on various dates during the years 2006 to 2011 while the Petitioner no.20 was directly recruited as Subedar/Inspector (Staff Nurse) on 23.09.1997.Amongst the Petitioner nos. 1 to 19, four of them viz the Petitioner no. 10, 12, 18 and 19 were recently promoted as Inspector (Staff Nurse) during 2013-14. Initial induction of Nurses through direct recruitment in the

ITBP is only at the level of Sub-Inspector (Staff Nurse) presently classified as a General Central Service, Group B, Non gazetted non ministerial post. It is governed by the pay scales of the 6th Pay Commission and was fixed in PB-2 in the scale of Rs. 9300-34800 plus Grade pay of Rs. 4200 w.e.f 1.1.2006. The immediate next post on promotion is that of Inspector (Staff Nurse) which is also classified as a General Central Service, Group B, Gazetted non ministerial post and has been fixed in PB-2 in the scale of Rs. 9300-34800 plus Grade pay of Rs. 4600/- w.e.f 1.1.2006.

8. It is submitted by Ms. Tamali Wad, learned counsel that with implementation of the 5th CPC and rationalization of pay scales w.e.f 10.10.1997, the rank of Subedar/ Inspector was placed in the revised pay scale of Rs. 6500-10500/-. In terms of ITBP order dated 06.03.1998 the post of Staff nurse in the pre revised scale of Rs. 1400-2600/- as well as the promotional post of Nursing sister in pre revised scale of Rs. 1640-2900/- being in the rank of Subedar/Inspector were both placed in the revised pay scale of Rs. 6500-10500/- (fifth CPC). As a consequence of this upgradatlon the revised pay of the Petitioner No.20 was fixed in the scale of Rs. 6500-10500/-. It is further submitted that on 29th March 2004 the Respondent No.1 issued an order directing that henceforth direct induction of Nurses in the Combatised posts of Para-medical staff in the Central Police Forces would be in the rank of Sub-Inspector in the pay scale of Rs. 5500-9000/-(5th CPC).

9. The ITBP Petitionersgrievance is that in the light of a Central Government order dated 31.03.2009, a Staff Nurse employed in the Central Government Hospital was placed in PB-2 in the revised scale of Rs. 9300- 34800 plus Grade pay of Rs. 4600 w.e.f 1.1.2006. So far as the ITBP is concerned the pay of the Petitioners no.1 to 19 was revised in PB-2 Rs. 9300-34800 but with lower Grade pay of Rs. 4200. Resultantly the pay of the said Petitioners w.e.f 1.1.2006 has been wrongly fixed at the minimum of the pay band i.e. at Rs. 9300 Instead of Rs. 12,540/- as directed by the Union Ministry of Health and Family Affairs. Further in so far as Nursing Sisters under the Central Government is concerned, their pay (Rs. 5500-9000/- pre- revised) has been revised in Rs. 9300-34800 plus Grade pay of Rs. 4800/- but in case of the Petitioner no.20 her pay has also been wrongly fixed by the ITBP in the revised scale of Rs. 9300-34800 plus Grade pay of Rs. 4600/-

instead of grade pay Rs. 4800/-. The ITBP Petitioners, like the CRPF Petitioners, rely on the recommendations of the fifth Pay commission, in support of their claim. These petitioners argue that nursing staff in the other departments, notably in the Ministry of Health and Family Welfare, have been fixed in the pay-scale of Rs. 9300-34800 plus Grade pay of Rs. 4600/- whereas in their cases, the grade pay is Rs. 4200/-. Besides, Nursing Sisters (who are equiavalent to SI grade) draw Rs. 4800/- grade pay in the Central Government, whereas in the ITBP it is Rs. 4600/-.

Respondentscontentions

10. The CRPF- the main respondent in W.P.(C) 1358/2014 does not deny that the Union Government approved revised pay structure of nursing and para-medical staff in terms of recommendations of VIth PC. It also admits that a higher scale was sanctioned for Non-Combatised Nursing Cadre in CRPF by order dated 18.06.2010. However the CRPF relies on a letter dated 25.08.2009 issued by second respondent to contend that review pay band/scale of Sub-Inspector of all categories including LM/Radio Grapher/Physio/Blood Bank Tech/Staff Nurse/Pharma OS(Non-Combatised)/Ward Sister (Non-Combatised)/Sr. Pharma was notified as the normal replacement applicable to category S-10.

11. Mr. Rajesh Gogna, learned standing counsel for the Union, argued that parity in pay cannot be insisted upon merely because of identity of nomenclature of the post. In this context, it was argued that unlike the cadre structure of nursing staff in other departments of the Central Government, that of the CRPF is based on its specific rules and regulations; an entirely different hierarchy of posts is in place. It is also emphasised that there is lack of parity as between Combatised and Non-Combatised staff nurses. Whereas the first class is entitled to 60 days leave annually, the latter, i.e Non-Combatised staff nurses are permitted only half that time as leave. Furthermore, as Combatised personnel, Combatised staff nurses are entitled to other allowances which Non-Combatised personnel are not entitled to. CRPF also submits that there is no comparison between Combatised nursing staff and Non-Combatised nursing staff. The latter do not enjoy several privileges which the former get, on account of being Combatised staff.

12. As regards ITBP, Mr. Gogna contended that extension of pay-scales in other departments of the Central Government cannot be a ground for saying that nursing staff in the force should necessarily have parity. Here, it is emphasized that the nursing staff enjoy a nursing allowance of Rs. 3200/-. Furthermore, there is no comparison between nursing staff of ITBP and combatised staff, such as those in General Duty. It is argued that the latter work under more onerous conditions and have to bear arms which is the reason their pay scales, grade pay etc are different. Nursing staff, on the other hand, work mostly in static postings.

13. The ITBP argues that by a Gazette notification dated 09.07.2010, the Central Government notified the ITBP Force Para-Medical Care (Group A,B,C Posts) Recruitment Rules, 2010. In supersession of all previous Recruitment Rules in respect of the Nursing and Paramedic staff of ITBP whereby Initial Induction by direct entry is in the post of Sub-Inspector (Staff Nurse) which is now classified as a General Central Service Group 'B'(Non Gazetted) Non Ministerial post and is placed in PB-2, Rs. 9300- 34800 plus grade pay Rs. 4200/-. The next post viz Inspector (Staff Nurse) classified as a General Central Service Group B Non (Gazetted) Non Ministerial post, to be filed up entirely through promotion from the feeder level of Sub Inspector (Staff Nurse) with 5 years regular service, has been placed in PB-2, Rs. 9300-34800 plus grade pay Rs. 4600 /-.

Analysis and Reasoning

14. Before proceeding to analyze the relative merits of the partiescontentions, it would be necessary to notice the recommendations of the Sixth Central Pay Commission. The relevant extracts are as follows:

Upgradation of certain categories

1.2.18 The Commission has recommended upgradation of certain specific categories like Nurses, Teachers, Constabulary and Postmen keeping in view the important functions being discharged by these categories. Parity between field offices and secretariat has been proposed as, in Commission's view, equal emphasis has to be given to the field offices in order to ensure better delivery.

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Nursing allowance

3.6.16 Nurses are presently given nursing allowance at the rate of Rs.1600 pm. In consonance with the general factor used for revising the rates of various allowances, the Commission recommends doubling of the rate of this allowance to Rs.3200 pm. The rate of this allowance shall be increased by 25% whenever DA payable on revised pay scales crosses 50%. This allowance should be paid to all the nurses whether working in dispensaries or in hospitals. This is necessary because nurses in CHS are already paid nursing allowance irrespective of whether they are deployed in hospitals or dispensaries. A similar dispensation, therefore, needs to be extended to the nursing staff working in other organizations as well.

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COMMON CATEGORIES

Introduction

3.8.1 Common categories of staff are those categories that are engaged in similar functions spread across various ministries/departments/organizations of the Central Government. These categories are not limited to any specific ministry or department and, therefore, any decision taken for them impacts more than one ministry/department/organization.

General Principles

3.8.3 While dealing with these common categories, the Commission has been guided by the following principles:-

(a) In future, all recruitments in the Central Government would only be in the posts belonging to Group Cor higher categories carrying minimum qualifications of matriculation or ITI.

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(e) Similarly, higher scales have been recommended for the nursing cadre keeping in view the arduous nature of their duties.

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Para Medical Staff

3.8.15 As mentioned in para 3.8.3, the Commission is recommending higher pay scales for the cadre of Nurses. This will affect some of the existing relativities of nursing cadres vis-a-vis other para medical staff. This, however, is a conscious decision of the Commission for giving a better deal to the Nurses in recognition of the duties being performed by them. Apart from the cadre of Nurses, the Commission has made a conscious effort not to disturb any of the established relativities between the other cadres of para medical staff. In any case, the different categories of para medical staff will benefit from the re-organization of pay scales being recommended by the Commission. Accordingly, the following pay structure is being recommended for different categories of para medical staff including Nurses:-

Designation	Present Pay Scale	Recommended Pay Scale	Corresponding Pay Band and Grade Pay	
Nursing Sister	5500-9000	7500-12000	PB-2	4800
Dietician Gr.II/Lecturer in PT/OT/Radiographer	6500-10500	7450-11500	PB-2	4600
Assistant Nursing Superintendent	6500-10500	8000-13500	PB-3	5400
Deputy Nursing Superintendent	7500-12000	8000-13500	PB-3	5400
Nursing Superintendent	8000-13500	10000-15200	PB-3	6100
Chief Nursing Officer	10000-15200	12000-16500	PB-3	6600

Posts of other para-medical technicians/personnel not mentioned above shall be extended the corresponding revised pay bands and grade pay. The posts which were in different pay scales earlier but have come to lie in an identical pay band and grade pay shall stand merged.

Rates of existing allowances for all the categories of para-medical staff, except those specifically considered in the Report (like HPCA/PCA), shall stand doubled. ?

CRPF's contention

15. In the counter affidavit filed before this Court, it is contended that a notification was received from DIGP (ADM) on 25.08.2009 regarding revised pay band/scale and grade pay in respect of various posts of Sub-Inspector (includingNurse/Pharma) OS(Non-Comb). It has relied on a tabular chart, which is reproduced below:

Existing Pay scale	Revised pay scale	Pay band	Corresponding Pay Band	Grade Pay	Relevant rule of CCS(RP) Rules-2008
5500-175-9000(S-10)	6500-10500	PB-2	9300-34800	4200	Part-B Sec-1(ii) of 1st Schedule

By order dated 18.06.2010 Non-Combatised nursing staff were granted the pay benefits. The following chart (extracted from the CRPF ?s counter affidavit) shows this:

SL. NO.	POST	Existing Pay Structure	Pay Structure approved by Govt.

01	Matron	GP 5400 in PB-3	GP 6600 in PB-3
02	Asstt. Matron	GP 4200 in PB-2	GP 5400 in PB-3
03	Ward Sister	GP 4200 in PB-2	GP 4800 in PB-2
04	Staff Nurse	GP 4200 in PB-2	GP 4600 in PB-2

The counter affidavit thereafter states:

4. That accordingly Pay of affected Civil nursing staff has been refixed. But the combatised nursing personnel have not been extended the benefit of above higher scale.

5. That for the above stated reasons the Petitioners, combatised nursing personnel, have not been extended the benefits of above upgraded scale, i.e. Grade pay from Rs.4200 to Rs.4600/-.

6. That since the pre-revised scales of civil nursing cadre were different hence no parity can be claimed and the petitioners are drawing correct pay as per latest instructions and according to the grade pay of entitled rank.

7. That it is further submitted that the Civilian Nurses have always been given higher pay scale by all the Pay Commissions.

The Petitioners are combatised Staff Nurses and are asking the parity of pay with common category Staff nurses. Here it is pertinent to mention that Non combatised Staff Nurses are entitled to only 30 days Earned Leave and 08 days Casual Leave in a year whereas Combatised personnel are entitled for 60 days Earned Leave and 15 days Casual Leave, besides free Railway warrant to visit home town annually, Ration Money, clothing kit articles etc. Also, age of retirement is different. However, pay structure of civil nursing cadre has been enhanced by letter dated 18.06.2010 issued by the Respondent No.1 with regard to the pay structure enhanced in civil organizations. Whereas combatised staff nurses have been placed alongwith similar rank in other cadres like GD, Min. etc.

8. That the Government of India while approving various posts in different departments/forces, considers the nature of deployment, number of personnel affected, condition of services etc. and pay scales and thereby finalizes the pay scales.

9. That as per letter no. 27012/26/2010-PF-III dated 18.06.2010 issued by the Respondent No.1, the pre-revised scales of Non-combatised and Combatised Staff Nurses are different. Therefore, the Respondents have not done anything contrary to law. ?

16. The Directorate General, CRPF ?s letter dated 25.08.2009 referred to above, reads as follows:

Subject NOTIFICATION OF RANK-WISE REVISED PAY STRUCTURE IN R/O CRPF PERSONNEL

Consequent on implementation of 6th CPC Report notified vide Notification No.G.S.R. 622 (E) dated 29/08/2008 revised pay band/scale and grade pay in respect of various ranks/posts of CRPF will be as under:-

Rank	Existing pay scale	Revised pay scale	Pay Band	Corresponding Pay Band	Grade Pay	Relevant rule of CCS(RP) Rules, 2008

Sub Insp(GD/Min/Stn/RO/RF/ RM/Crypto/Tech/ Armr/MT/ MM/TLR/ JE/DM/ LM/Radio Grapher/ Physio/ Blood Bank Tech/Staff Nurse/ Pharma) OS(Non-Comb)/ Water Sister (Non-Comb)/Sr.Pharm	5500-175-9000 (S-10)	6500-10500	PB-2	9300-34800	4200	Part-B Sec I(ii) of 1st Schedule.
Hd. Clk (Non Comb/Stn(GR-II (Non Com)/HT (GR-I)/Staff Nurse (Non Comb)/Pharm (G-I) (Non_Comb)/FSN	5000-150-8000 (S-9)	6500-10500	PB-2	9300-34800	4200	Part-B Sec I(ii) of 1st Schedule

XXXXXXX XXXXXX XXXXXX
(S.R. Ojha)

DIGP (Adm)

Dte. Genl. CRPF ?

The letter dated 18.06.2010, addressed by the Union Home Ministry to the CRPF reads as follows:

Sub: Grant of upgraded pay scales recommended by 6th CPC to non-combatised nursing staff in CRPF " reg.

I am directed to refer to DG CRPF's UO No.P.I-1/2009-PC Cell-6th CPC (Adm.I) dated 15.4.2009 on the above subject, and convey the approval of the competent authority for grant of upgraded pay scales to non-combatised nursing cadre in CRPF, as per the specific recommendations of 6th CPC regarding the common category posts belonging to Nursing Cadre wef the date of implementation of the CCS (Revised Pay) Rules, 2008, as indicated below:-

(in Rupees)

SI No.	Post	Existing pay structure	Pay structure approved by D/o Expenditure
1	Matron	GP 5400 in PB-3	GP 6600 in PB-3
2	Asstt Matron/Sister incharge	GP 4200 in PB-2	GP 5400 in PB-3
3	Ward Sister	GP 4200 in PB-2	GP 4800 in PB-2
4	Staff Nurse	GP 4200 in PB-2	GP 4600 in PB-2

2. This issues with the approval of Ministry of Finance (Department of Expenditure, Implementation Cell) vide their UO No.7.19/26/2009-IC dated 30.4.2010 and concurrence of Integrated Finance Division of this Ministry vide their Dy. No.662/Fin.II/2010 dated 17.6.2010. ?

It is clear from the above extracts of the CRPF ?s affidavit that:

(a) Non-Combatised nursing staff was granted higher grade pay with effect from the date of implementation of the Central Civil Services (Revised Pay) Rules, 2008, i.e 1-1-2006 even though approval was only on 18-06-2010;

(b) There was no attempt to analyse and consider the relativities of pay of similar staff, within the organization;

(c) The CRPF does not deny that Non-Combatised nursing staff have less onerous duties as compared to Combatised staff. However it prefers to highlight certain disparities, such as facility of longer duration of annual leave and allowances given to Combatised nurses because they bear arms.

(d) No attempt has been made in the counter affidavit by CRPF to show why the recommendations of the Sixth PC cannot be implemented only on the question of parity of grade pay, i.e grant of Rs. 4600 /-.

17. It is astonishing that the CRPF rationalizes the disparity in pay structure within the organization, between nursing staff. The essence of discrimination is where the state of its agency treats two individuals or groups unequally, where there is no justification to do so. To sustain the differentia CRPF highlights certain points, viz that Non-Combatised staff get less leave and are not receipents of certain privileges which Combatised staff secure. However, these differences have no bearing on the salient aspect of identity of work between the two categories. It is obvious that Combatised nursing staff have to be given the same leave allowances and facilities which other Combatised staff are granted: that is the mandate of Article 14, as between those two groups, because both are Combatised and discharge onerous duties, in forward and non-static areas. In the same breath, given that Combatised nursing staff discharge onerous duties under difficult circumstances cannot be a valid justification to deny parity in the general pay structure- to wit, grade pay with Non-Combatised nursing staff, because both perform identical duties in hospitals, clinics and dispensaries.

18. That over-emphasis on the doctrine of classification can lead to strange results which defy the concept of equality was perceived long ago; in *Roop Chand Adlakha v Delhi Development Authority* 1988 Supp (3) SCR 253 the Supreme

Court ruled as follows:

But the process cannot in itself generate or aggravate the inequality. The process cannot merely blow-up or magnify in- substantial or microscopic differences on merely meretricious or plausible differences. The over-emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing Doctrine of equality by the doctrine of classification. ?

19. The present case is a striking instance of the government justifying an untenable differentiation on the anvil of doctrine of classification. The *rationale* cannot pass muster; it is clearly untenable and the result discernable to the Court, i.e plain discrimination by the CRPF of two categories falling within the same class, i.e nursing staff.

20. In the case of ITBP too, the *rationale* wears thin- albeit for different reasons. ITBP (another wing of the Central Government) curiously rejects the demand for parity of grade pay to nursing staff (saying that Combatised personnel are discharging more onerous duties and nurses have to work in static postings). The irony here is not lost on the Court: in the CRPF this *rationale* is used to deny Combatised nursing staff parity with Non-Combatised nursing staff, vis- -vis grade pay. In other words, here it is stated that Combatised staff perform onerous duties and are to be given higher grade pay. This logic is a perfect answer to the CRPF's stand in the petition against it. And the CRPF's stand that non-combatised nursing staff can get higher grade pay because they work in less onerous conditions, is a perfect answer to the ITBP's reply in the writ petition filed by its nursing staff. This Court does not want to speculate further because elements of the theatre of the absurd would emerge from exploring incompatible arguments made by two wings of the same authority, i.e the Central Government. Instead, it would prefer to rest its decision on the established principles which apply to consider claims for parity in pay structure and claims.

21. Executive free play in the joints in devising pay revisions was emphasized by the Supreme Court in the following passage in *Secretary, Finance Department and Ors. v. West Bengal Registration Service Association and Ors.* 1993 SUPP (1)

SCC 153 where the scope of judicial review in such decisions was spelt out:

"We do not consider it necessary to traverse the case law on which reliance has been placed by counsel for the appellants as it is well settled that equation of posts and determination of pay scales is the primary function of the executive and not the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the pay commissions, etc. But that is not to say that the court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary state action or inaction. Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability of the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc. We have also referred to the history of service and the effort of various bodies to reduce the total number of pay scales to a reasonable number. Such reduction in the number of pay scales has to be achieved by resorting to broad banding of posts by placing different posts having comparable job charts in a common scale. Substantial reduction in the number of pay scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalization of the pay structure does not throw up anomalies. Ordinarily a pay structure is evolved keeping in mind several factors, e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix)

satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasize that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well. It is presumably for this reason that the Judicial Secretary who had strongly recommended a substantial hike in the salary of the sub-registrars to the second (state) pay commission found it difficult to concede the demand made by the registration service before him in his capacity as the chairman of the third (state) pay commission. There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and court's interference is absolutely necessary to undo the injustice. ?

22. The demand for parity in both the CRPF and ITBP amongst its nursing staff have certain salient aspects:

(1) It stems from a common recommendation of the VIth PC to treat all nursing staff equally (Para 3.8.3 (e) of the report/recommendations) in view of the *arduous* nature of their duties;

(2) The report/recommendation was that all nursing staff, regardless of whether they worked in hospitals or dispensaries, should be given nursing allowance of Rs. 3200/- per month.

(3) Other wings of the Central Government, where nursing staff form part of the cadre: typically in the Ministry of Health and Family Welfare have been granted pay scales and allowances in line with the Sixth PC report.

(4) Before the Sixth PC recommendations and the CCS (Revised Pay) Rules 2008, there was no disparity as between Combatised nursing staff and Non-Combatised nursing staff, within CRPF.

23. The recommendation of the Sixth PC, pertinently is that:

3.8.15 As mentioned in para 3.8.3, the Commission is recommending higher pay scales for the cadre of Nurses. This will affect some of the existing relativities of nursing cadres vis-a-vis other para medical staff. This, however, is a conscious decision of the Commission for giving a better deal to the Nurses in recognition of the duties being performed by them. Apart from the cadre of Nurses, the Commission has made a conscious effort not to disturb any of the established relativities between the other cadres of para medical staff. In any case, the different categories of para medical staff will benefit from the re-organization of pay scales being recommended by the Commission. Accordingly, the following pay structure is being recommended for different categories of para medical staff including Nurses:-

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Posts of other para-medical technicians/personnel not mentioned above shall be extended the corresponding revised pay bands and grade pay. The posts which were in different pay scales earlier but have come to lie in an identical pay band and grade pay shall stand merged.

Rates of existing allowances for all the categories of para-medical staff, except those specifically considered in the Report (like HPCA/PCA), shall stand doubled. ?

24. The Central Government " and the CRPF as well as ITBP do not dispute that in regard to the replacement scales and increments, allowances recommended, etc by the Sixth PC, there is unreserved acceptance. However in regard to Grade Pay (and fixation in scale) there is resistance. This Court has already expressed why the CRPF's justification for denial of parity to Combatised nursing staff with its Non-Combatised nursing staff is discriminatory. The same logic prevails in respect of the claim of ITBP personnel. They may not be Combatised; yet, they do perform arduous duties. The pay scales recommended by the Sixth Pay Commission have been given them. The *rationale* for specifically denying grade pay (as claimed by them) is that they receive Rs. 3200/- per month as nursing allowance. However,

that logic is a self defeating one; the allowance was recommended for all- evident from the above extract of the Sixth CPC. Like in the CRPF, that the nursing staff secure some allowance cannot be a counter to denial of what was recommended as their grade pay.

25. For the foregoing reasons, the writ petitions have to succeed. In W.P.(C) 1358/2014 the respondents are directed to accord parity to Combatised Sub-Inspector Nurses with Non-Combatised Staff Nurses (holding the rank of Sub-Inspector [SI]) and fix their grade pay at Rs. 4600/- per month, as claimed by them. Similarly, in W.P.(C) 3829/2014, the petitioners shall be granted parity with Nursing Sister, in the grade pay of Rs. 4600/- (PB-2) in the pay scale of Rs. 9300/-34800/- of the Indo Tibetan Border Police Force (ITBP) in the case of all petitioners, except Petitioner Nos. 10,12,18,19 and 20- in the case of the latter, the grade pay shall be Rs. 4800/-. In both these petitions, the grade pay shall be in Category S-10 under the Central Civil Services (Revised Pay) Rules, 2008, (2008 Rules). The fixation shall be effective from the date the said rules came into force; consequential orders releasing differential amounts shall be issued within 12 weeks from today. W.P.(C) 1358/2014 and W.P.(C) 3829/2014 are allowed in the above terms; there shall be no order as to costs.

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