

G.K.K. Pillai and ors. Vs. Union of India (Uoi) and anr.

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Court : Delhi

Decided On : Feb-19-2002

Reported in : 2002VIAD(Delhi)157; 97(2002)DLT395

Judge : Vijender Jain, J.

Acts : [Constitution of India](#) - Article 14

Appeal No. : CWP No. 1212 of 1998

Appellant : G.K.K. Pillai and ors.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Keshav Dayal, Sr. Adv. and ; Shruti Pandey, Adv.

Advocate for Pet/Ap. : Shyamala Pappu, Sr. Adv. and; M.R. Krishnaamorty, Adv

Disposition : Petition allowed

Judgement :

Vijender Jain, J.

1. Rule.
2. The present petition has been filed by the Assistant Sub-Inspectors (Radio Operators/Ciphers/Radio Mechanics) working in the Border Security Force. Dr. Shyamala Pappu, learned senior counsel for the petitioners has contended that as there were anomalies in the existing rank structure and pay scales of various cadres in the Central Police Organisations including the Border Security Force, the matter was referred to 5th Pay Commission. The 5th pay Commission after considering the anomalies in the rank structure and pay scale of the Central Police Organisations recommended parity among the employees of different Central Police Organisations in respect of rank structure, pay scale and other service conditions.
3. The Government of India, Ministry of Finance vide its letter dated 30th September, 1997 duly notified in the Gazette of India, after careful considerations of the recommendation of the 5th pay Commission which inter alia contained Clause 7 to the following effect:

'In respect of personnel of Central Police Organisations, in the rank from Constable to Subedar Major, Ministry of Home Affairs will carry out an exercise for rationalizations of ranks so as to achieve parity with Delhi Police, pending which the scales recommended by the Fifth CPC will be applied.'
4. In the said annexure containing part A, inter alia, reflected the existing scales of pay grades and the revised scales of pay was also notified. I need not go into the other scales of pay and grades. Suffice it would be to quote the relevant scale of pay which are relevant for adjudication of the matter as under :-

Existing Scales of Grades Revised Scales of pay pay -----1200-30-1440-30-1800 S-7
4000-100-60001200-30-1560-40-20401320-30-1560-40-20401350-30-1440-40-1800- S-8 5000-150-800050-
22001400-40-1800-50-23001400-40-1600-50-2300- S-9 5000-150-800060-26001600-50-2600-75-2660

5. It is the contention of the petitioner that although the Government rationalised the rank structure and pay scale of Central Police Organisations at par with Delhi Police, however, the petitions who are ASI in the communication wing of the Border Security Force (BSF) have not been accorded the benefits accrued to them because of the aforesaid rationalisation and the petitioner are receiving lesser pay scale than that of Delhi Police Assistant Sub-Inspector performing the same duties.

Counsel for the petitioner relied upon Annexure 4 which is at page 48 of the paper-book, which is a statement regarding revised pay pay scale in respect of officers of Delhi Police. The same is as follows :

S.No. Rank Pre revises Revisedscale pay scale -----7. ASI (Wireless 1600-50-2300-
EB- 5000-150- operator. Radio 60-2060 8000Technician)

6. It was contended before me that the Director General, Border Security Force itself recommended the case of ASI working under the BSF as operator/Ciphers/radio mechanics for getting the grade of Rs. 5000-150-8000 in the said recommendation. The additional points which were recommended by the BSF to the Central Government highlighted the fact that as the Government has recommended the pay scale of Central police Organisations at par with Delhi Police, the promotion avenue in the BSF personnel remains in the rank of ASIs for about more than 10 years and, therefore, the ASIs in BSF will be benefited even if the special pay is not given and finally at page 54 of the paper-book it was recommended that the ASIs serving in the BSF should be given the grade of Rs. 5000-150-8000 so as to bring the ASIs working in the BSF on parity with the pay scale of the ASIs working in Delhi Police as radio mechanics.

7. It was contended by counsel for the petitioners that in view of the gazette notifications issued by the Government of India as reproduced above, there is no reason why the petitioner be discriminated and the revised pay scale of Rs. 5000-150-8000 be not given to the petitioner when the same grade is given to the Assistant Sub-Inspector/Radio Operators performing the same duties.

8. On the other hand, Mr. Keshav Dayal, learned senior counsel for the respondents has contended that the respondents have brought parity to the extent as mentioned in the Ministry of Home Affairs order dated 10.10.1997. It was contended that in view of 5th pay Commission report the pay scale of head constable/radio mechanics have been merged with ASI/RM and all posts of head constable in radio mechanics cadre were re-designated as ASI. The second limb of arguments advanced by Mr. Dayal was that the claim of ASI (Opr) for pay scale of Rs. 5000-8000 which is the pay scale of ASI (Wireless operator) in Delhi Police, cannot be given to the petitioners as there is no direct entry in the rank of Assistant Sub-Inspector (wireless operator) in BSF and secondly no comparison can be made between direct recruit of Delhi Police with the promoted Assistant Sub-Inspector (Operators) of BSF who are initially appointed as head constables. An effort was made by learned counsel for the respondent to argue that the qualification for the post of ASI (Operator)/Radio Mechanics in BSF is different than educational qualification required for ASI/Radio operator in Delhi Police. In support of his arguments, learned counsel for the respondent has cited Federation of All Indian Customs & Central Excise Stenographers (Recognised) and Ors. v. Union of India and Ors. : [1988]3SCR998 . On the basis of the aforesaid authority, it was contended before me that the functions may be the same but the responsibility makes a difference and that difference is a matter of degree and that is the element of value judgment which is in the domain of the executive and the Court should not interfere in the said domain.

9. Learned counsel for the respondent also cited Sita Devi and Ors. etc. v. State of Haryana and Ors. : (1996)IILLJ817SC . In support of his submission Mr. Dayal has also cited Garhwal Jal Sansthan Karmachari Union and Anr. v. State of Uttar Pradesh and Ors. : (1997)IILLJ147SC and on the basis of the aforesaid authorities, he contended that the duties performed by the ASI of Delhi Police was qualitatively different than performed by ASI/Radio operators of the Border Security Force. Mr. Dayal in support of his arguments has

further relied upon State of Madhya Pradesh and Anr. v. Pramod Bhartiya and Ors. : (1993)ILLJ490SC as well as Randhir Singh v. Union of India and Ors. : (1982)ILLJ344SC .

10. It was further contended by Mr. Dayal that the petitioners were not entitled to get the pay scale of Rs. 5000-15-8000 in view of the fact that they were given replacement scale of Rs. 4000-100-6000, which was applicable to Delhi Police Assistant Sub-Inspector (Executive), who were drawing the pay scale of Rs. 1320-2040 (pre revised) which was similar to Border Security Force Assistant Sub-Inspector.

11. I have given my careful consideration to the arguments advanced by learned counsel for the parties. At the outset it must be borne in mind that Director General of Border Security Force itself has recommended for grant of pay scale of Rs. 5000-150-8000 to the Assistant Sub-Inspector working in BSF as radio operators as per page 54 of the paper-book. Based on the report of the Deputy Director, a note dated 23.10.1997 was sent to the Head quarter of BSF. The Inspector General of BSF on 23.10.1997 issued a circular dated 23.10.1997 (which is at page 56 of the paper-book) and in the said circular in para 6 request was forwarded to the Ministry of Home Affairs which is reproduced below:

'ASI(RO)/Cipher: The posts exist in Delhi Police also for which the revised scale of Rs. 5000-150-8000 has been approved. It is suggested that ASIs (RO/ Cipher in BSF also should be placed in the same scale.'

12. As a matter of fact why this anomaly remained can be seen from the reference made to the Ministry of Home Affairs by the Director General, BSF as the order issued on 10.10.1997 revising the rank structure and pay scale of non-gazette staff of Central Police Organisations covered only executive staff which means that an ASI (Executive) working in Delhi police and Assistant Sub-Inspector working in BSF who were not performing the duties of radio technicians or cipher were not brought under the said circular. Although in principle it was agreed by the Central Government on the basis of the recommendations of 5th pay Commission that the rank structure and the pay scale of all non-gazetted Central Police Organisations officers vis-a-vis the pay scale of Delhi police has to be rationalised. Although, Mr. Dayal tried to distinguish the case of the petitioners by taking the plea that the essential requirements or the eligibility criterion in the case of ASI (R) working in the BSF and Delhi Police are different, the nature of duties and the responsibilities performed by the two are different. This argument, I will deal later.

13. From the perusal of Annexure Part A of the notification issued by the Government of India on 30th September, 1997 in relation to categories mentioned at Serial Nos. 7, 8 and 9, which has been reproduced above, the revised pay scale are (i) Rs. 4000-100-6000, (ii) Rs. 4500-125-7000 and (iii) Rs. 5000-150-8000, the Sub-Inspector (Radio) working in the BSF as well as Inspectors Radio mechanics working in the BSF have been given the pay scale of Rs. 5500-175-9000 and Rs. 6500-200-10500, the same pay scale which has been given to the Sub-inspector and Inspector Radio mechanics in Delhi Police. ASI is the feeder service from which Sub-Inspector and Inspector are promoted, if Sub-Inspector and Inspector who are promoted from Assistant Sub-Inspector are eligible and given the same pay scale which Sub-inspector and Inspector are working in Delhi Police are getting, then there is no basis or rationality in denying the same to the petitioners.

14. It was contended before me that the nature of duties as well as qualifications for ASIs (R) working in BSF and Delhi Police are different. During the course of arguments, a comparative chart, inter alia, requiring the academic qualifications and nature of duties of ASI (RO) of BSF and Delhi Police was filed. It makes an interesting reading. As a matter of fact, it falsifies the stand of the respondent. While taking into consideration, the comparative chart and the educational qualifications at the entry level in BSF for head constable (RO), the qualifications are metriculate or equivalent plus two years ITI certificate in radio and TV/electronics or intermediate or 10 + 2 equivalent with physics, Chemistry and Maths from a recognised board of education, whereas in Delhi Police the ASI can be appointed by direct recruitment only on the basis of (a) metriculation, (b) second class certificate of competency as Wireless Operator issued by the Ministry of Transport and Communications or having passed Grade-II proficiency test of wireless operator conducted/approved by the DCPW (Directorate of Coordination's of Police Wireless), (c) two years practical

experience in the actual operation of radio sets, preferable the VHF, in Civil Aviation, P & T Deptt. Rlys. or any Govt. agency.

15. From the bare perusal of the comparative chart filed by the respondents, the requirement for entry into the basic level of head constable operator in the BSF is metriculate or equivalent plus two years ITI certificate in radio and TV/electronics or intermediate or 10 + 2 or equivalent with Physics, Chemistry and Maths form a recognised Board or Institution and if the person has to be promoted to ASI, he must have minimum five years of service as head constable operator. He has to undergo a training of map reading. He has to further undergo a pre-promotion qualification required for ASI operator i.e. upgradations operation cause t be passed.

16. Why I have highlighted this is to show that the BSF itself has recommended as I have discussed above that the ASI (wireless operator) be granted the same pay scale as has been given to the ASI (Wireless operator) of Delhi Police. By filing this comparative statement it was sought to be argued that eh essential qualification which was required was different than that of the BSF. A comparative chart of the duties of ASI/RO, BSF as well as ASI Radio Operator, Delhi Police was also filed, which also makes a very interesting reading. The same is given below :

Academic Qualifications/Duties:1. Entry level qualifications Name of the post-Wireless for Head Constable (operator) Operator ASI/SI Matri or equivalent plus two Whether selection post years ITI certificate in Or non selection post Radio and TV/Electronics or Intermediate or 10+2 or None selection if the post Equivalent with Physics, is filled by promotion and Chemistry and Maths form a post applications when the recognised Board of post is filled-up through Education. direct recruitment 2 a) Further pre-promotion a) metriculation or qualification required for equivalent ASI (Operator) upgradation b) Second class certificate Operator courses to be of competency as wireless passed. Opr, issued by the Min of transport and Communication b) Map Reading Standard-Ist or having passed Grade-II, proficiency test of Wireless c) Minimum 5 years of service Operator conducted/approved as Head Constable (Operator) by the DCWP c) 2 Yrs practical experience in the actual operator of radio sets, preferable the VHF, in civil Aviation, P&T; Deptt. Rlys. or any Govt. Agency 3. Charter of Duties of Charter of Duties of ASI/ ASI(RO) BSF OPR Delhi Police Static Locations a) BSF ASI (opr) have to i) To provide security and perform duties in various safety of the VIP/VVIPs. He nature of deployment has to provide `Action countrywide as following Oriented operational communication with the best i) Ensure efficient and rapid possible Response time,. handling of traffic in the signal centre during his ii) The ASI/SI is tenure of duty. responsible for the communication of main net ii) Be alert and fully for which he is deployed. prepared-to take decisions. He should control and maintain efficient iii) Be competent and in a communication and net position to assist and advise discipline. the staff working in the Signal Centre. iii) He is responsible for the communication from, to iv) Responsible for and between all the stations re-distribution of personnel of the net. as necessary to over come bottle-necks and iv) He is responsible to re-adjustment within the operate Automax shift to ensure equal load on communication system by all personnel. which all the messages pertaining to other states v) Responsible for proper are cleared directly. layout and maintenance of the Centre. v) He should perform cent per cent security vi) Ensure over all communication. cleanliness in and around the Signal Centre. vi) He has to help the local police for maintaining law vii) Ensure serviceability of and order. stand by generators lead from generator to signal centre. vii) He has to perform the duty as duty officer of the Control Room who is viii) In the event of a responsible of entire circuit breakdown, he is communication of the responsible to trace the particular district and to fault and its source, and to keep inform all the senior find out what progress is officers with all the being made towards its information/happening in the restoration and info O I/C district during his duty. regularly. ix) He is responsible to viii) He is also responsible order for opening of to initiate the demand of alternative circuits, in the extra force required at the event of a circuit break time of any big incident down. x) He will ensure that the ix) The wireless opr stand-by equipment is always (ASI/SI) is being put on kept in working order and duty as line officer as well ready for use. as motor transport officers. xi) He will ensure that x) He has to take decision maintenance and routine at his own when the VVIPs testing of all equipment in change the route and secrecy

Signal Centre is carried out in communication has to be during his shift. provided accordingly. xii) In the event of serious break-down, he will report xi) He has to block the the same to the O I/C looking route and implement after the Signal Centre. conveyance plan and organise a chase by PCR vans to apprehend the get away xiii) Expeditious clearance vehicles and criminals. of traffic will be his primary concern. This xii) He is the in charge of involves :- general communication and operational comn in the xiv) Speedy restoration of sub-division. fault circuits xiii) He is responsible for xv) Use of alternate routing efficient and effective and stand by circuits in the static mobile. circuit. xiv) He will always remain in touch with the Addl DCSP xvi) On the job supervision- and ACP/headquarters for all matters the Distt. required xvii) Anticipation of the for immediate action. state of comn and taking necessary steps well in advance to cope up with xv) He is responsible for changing conditions discipline of the staff deployed on duty in Sub xviii) On the job training control room, maintain the will be organized to improve logs/records properly and technical ability of their safety. personnel employed in Signal Centre xvi) He is responsible to operate simultaneous xix) Responsible for broadcasts system to convey maintaining close liaison information to all district with the staff of the other nets, traffic net. Patrol Signal Centres and DOT staff van nets and motor cycle at appropriate levels. net./wireless integrated PA system. xx) Maintaining all records xvii) He is responsible to required in the Signal check/inspect the Centre. communication of all the stations under this sub xxi) Suitable instructions to divisions. Signal Centre personnel given to intimate him about xviii) He is also messages indicating an responsible for imparting impending move of units or training to Asstt wireless officers with which the Operators and 7 Frontier is concerned Constable/Head consist of executive police. xxii) ADSO must know the location of units and HQ to which signal centre provides commons. xxiii) The state of all channels of commons i.e. Automax, BEST, CW HF Net and VHF Net terminating in the Signal Centre xxiv) Projected move of HQ or units with which signal centre is in Comn, and projected changes in commons. xxv) Safe custody of classified documents xxvi) Security training of personnel employed in the Signal Centre xxvii) Maintenance of Comn state board xxviii) Briefing/debriefing of runners clearing the signal xxix) Supervision of bring of traffic/ extra copies/ carbon copies xxx) Location of IG & VIPs if in station xxxi) Personal supervision in clearance of FLASH/ EMERGENCY Messages/ SITREPS xxxii) Periodically scrutinize the traffic to minimize service traffic and curtail higher precedence messages xxxiii) Handing/taking over of classified documents in Signal Centre at the time of change over of shifts xxxiv) Administration and management of shift personnel (b) Deployed Battalions i) BSF is performing the duties on the border of India in various terrain like Kutch - Ran of Gujarat, desert of Rajasthan, snow bound hilly and tough area of Kashmir, highly touch and difficult area of Tripura, Manipur and Cachhar. ii) ASI(RO) of BSF is performing the duties on above mentioned Border round the clock to provide Comn. from border out posts to HQ. iii) He is dealing with Top Secret Cipher documents at the BOP and handling the classified messages iv) On the border where there is no provision of electricity, BSF Radio Opr is responsible for charging batteries by the charging engines to smooth communication. v) He is laying out/ maintaining the telephone lines. vi) He is performing the duties with Ops column on . long route patrolling in various terrain vii) An ASI (RO) while deployed on border, has to perform the duties of Cipher, Radio Mechanic and Engine Fitter, in addition to his own duties. viii) He is away from his children/family most of the time during his service period due to various unfavorable conditions. c) INTERNAL SECURITY DUTTIES i) ASI (RO) of BSF is performing the duties of wireless operator to proving Comn. ii) He is deployed with the troops on anti-militancy duty, election duty, border duties to perform forward and rear comn coverage. iii) He is responsible for maintaining batteries, charging engines, telephone lines, telephone exchange and Ciper documents for encryption/decryption of classified messages.

17. Taking into consideration the duties as filed by the respondent the duties and functions of ASI/RO, BSF are far more onerous in comparison to the duties performed by ASI, Operator, Delhi Police. From the bare perusal of the chart given by the respondent the degree of skill, experience, training, responsibility, strain, fatigue, risk, confidentiality undertaken and physical requirement are factors which are to be borne in mind. The authorities cited by learned counsel for the respondent of Federation of All India Customs & Central Excise Stenographers (Recognised) & Others (supra) lays down that the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service and so long as such value judgment is made bona fide,

reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. In the case before hand, the value judgment of the respondent if based on the conditions set out by Supreme Court then this Court would be reluctant in interfering with the said value judgment. But in the case before hand after taking a decision that a parity in pay scale has to be maintained in terms of structure as well as scales of all non-gazetted officers working in the BSF along with Delhi Police, non-allowing the same pay scale to ASIs (R), BSF with those of the ASIs of Delhi Police, the value judgment is totally irrational and based on no basis. The case of Sita Devi & Others (supra), cited by learned counsel for the respondent is not applicable to the present case. In Sita Devi's case, the Supreme Court held that the grievance made by the petitioner was not acceptable as the petitioners who were non-matriculate instructors in adult literacy programme wanted to have a parity with those who were metriculate. Similarly the authority cited by learned counsel for the respondent of Garhwal Jal Sansthan Karmachari Union (supra) was based on qualitative difference in duties on the ground that employees working in Jal Nigam and Jal Nigam having wider jurisdiction while the Garhwal Jal Sansthan was exercising jurisdiction only on local bodies.

18. Here I may recall Randhir Singh's case (supra). Chinnappa Reddy, J. speaking for the bench said :

'We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.'

19. I do not find any force in the arguments of counsel for the respondents that petitioners have failed to discharge the burden of establishing their right to equal pay on the person claiming the same as per the decision of State of Madhya Pradesh and Anr. v. Pramod Bhartiya (supra). As a matter of fact, in view of the recommendations of the BSF that the petitioners were performing the same duties as that of ASI/Radio Operators in Delhi Police and in view of the recommendations made by the BSF to the Central Government that the petitioners were entitled to the revised pay scale of Rs. 5000-8000, there was no question of discharging onus by the petitioners. After the comparative statement has been filed by the respondents, the duties, responsibilities functions are nearly the same which are performed by ASI/operators BSF. Equal pay for equal work is implicit in the doctrine of equality enshrined in Article 14 of the [Constitution of India](#) and if cause of action relating to the pay scale is based on irrationality and unreasonableness, Article 14 comes into play. In view of the records placed regarding the responsibilities, duties and functions, same being similar in nature, the non-grant of similar pay scale as that of Delhi Police is irrational and without any basis. Net result is respondents are directed to bring parity in respect of pay scale of the personnel of Communication with (ASIs) of BSF with the communication wing (ASIs) of Delhi Police by granting the same pay scale of Rs. 5000-150-8000 to the petitioners w.e.f. the date it has been granted to the ASIs, wireless, Radio operators, technicians in Delhi Police. Arrears of difference be paid within a period of three months from the date of order.

20. Rule is made absolute. Petition stands disposed of.