Ashok Kumar Vaid Vs. the Indian Road Construction Corpn. Ltd.

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Court : Delhi

Decided On : Jul-14-1998

Reported in : 1998IVAD(Delhi)957; 74(1998)DLT760; 1998(46)DRJ372

Judge : K. Ramamoorthy, J.

Acts : Service Law

Appeal No. : CW. No. 4178 of 1996

Appellant : Ashok Kumar Vaid

Respondent : The Indian Road Construction Corpn. Ltd.

Advocate for Def. : V.K. Shali, Adv.

Advocate for Pet/Ap. : E.X. Joseph, Senior Adv

Disposition : Petition allowed

Judgement :

K. Kumamoorthy, J.

1. There are 14 petitioners who are working with the first respondent the Indian Road Construction Corporation Limited. The service particulars of the petitionersare as under:-

S.No.Name & Designation Date of promotion as Dy. Manager1.Sh.Ashok Kumar Vaid18.09.1991 Dy.Manager (P)2.Sh..Satnam Singh Arora16.02.1993 Dy. Manager (P)3 ,Sh.Rajcsh Hari18.09. 1991 Dy.Manager(P)4.Sh.Chittcr Sen16.02.1998 Dy.Manager (P)5.Mrs.Radhey Dua31.12.1993 Dy.Manager (P)6.Sh.Ram Bilas Ram14.03.199Dy.Manager (P)7.Sh.Rama Krishna Varanasi25.05.1992 Dy.Manager (F&A;/c)8.Sh.S.P. Gupta25.05.1992 Dy.Manager (F&A;/c)9.Sh. Satish Kumar Dareja25.05.1992 Dy.Managcr (F&A;/c)10.Sh.Shayam Lal Arora25.05.1992 Dy.Manager (F&A;/c)11.Sh.R.K. Arora31.12.1993 Dy.Manager (F&A;/c)12.Sh.A.K. Mathur31.12.1993 Dy.Manager (F&A;/c)13.Sh.S.Surin31.12.1993 Dy.Manager (F&A;/c)14.Sh.Gurcharan Singh02.07.1992 Chief Draughtsman

2. The main grievance is that on the 10th of July, 1990, the first respondent Corporation, issued a memo granting the pay scale of Rs. 2200-4000 to the Deputy Managers of all wings in the first respondent Corporation. On the 31st of July, 1990, the memorandum dated the 10th of July, 1990 was withdrawn and the pay scale of Rs.2000-3500 was fixed for the Deputy Managers belonging to P&A;, F&A; and Chief Draughtsman. The petitioners belong to Deputy Managers (P&A;), (F&A;)and Chief Draughtsman. There are five wings in the first respondent Corporation and they are as follows:-

(a) Personnel and Administration

(b) Finance and Accounts

(c) Chief Draughtsman

(d) Civil

(e) Mechanical

3. Pursuant to the judgment of the Supreme Court, the Ministry of Programme Implementation, (Department of Public Enterprises) Government of India, issued an Office Memorandum on the 12th of June, 1990 stating:-

'In pursuance to directives given by the Hon'ble Supreme Court on 14th March, 1986 in connection with several writ petitions filed by the employees of certain public sector enterprises, Government had appointed a High Power Pay Committee on 7th April, 1986. The Committee under the Chairmanship of Hon'ble Mr. Justice R.B. Misra gave its final report to the Government on 24th November, 1988. The Government, after considering all aspects of the Report, filed an affidavit before the Supreme Court on 17th April, 1990 seeking the directions from the Supreme Court in regard to the manner of implementation of the Report. The Hon'ble Supreme Court delivered their judgment on 3rd May, 1990 giving directions for implementation of the Report. A copy of the judgment is enclosed at Annexure-1.

The public enterprises which have been following the 3rd/4th CPC DA pattern may be advised to take action as brought out in the following paragraphs. Reference to paras of the Report have been given wherever applicable which may be consulted for clarifications/elucidations. In case any doubts regarding applicability still persist, the matter may be referred to the Department of Public Enterprises for clarifications.'

Anticipating that there may be some anomalies in fixing up these pay scales, the office memorandum provided:-

'ANOMALIES IN ALLOTMENT OF PAY SCALES: Any anomalies are noticed in a fitment of the existing scales into the general pattern of scales now notified, these could be reviewed by a Committee set up by the PSE concerned and the formulations processed after' taking approval of the administrative Ministry in consultation with their integrated Finance Wing.'

4. On the 29th of April, 1985, the Ministry of Finance (Department of Expenditure) issued an office memorandum granting interim r6lief to all the Central Government employees. For those who are coming under 'Executives', the following pay scales were granted:-

Dy. Manager (F&A;) 900-1300 2000-3500 2200-4000

Dy. Manager (Mech.) 900-1300 2000-3500 2200-4000

5. The pay scale granted by the Central Government was given by all the public sector undertakings.

6. On the 12th of June, 1990, the Bureau of Public Enterprises issued a memorandum stating that the pay scales that had been recommended by HPPC would be applicable to officers and staff of the first respondent Corporation w.e.f. 1.1.1980.

7. On the 10th of July, 1990, the first respondent Corporation, issued a memorandum granting the pay scale of Rs.2200-4000 to all the Deputy Managers who were in the existing scale of Rs. 900-1300.

8. On the 3lst of July, 1990, the memorandum issued on the 10th of July, 1990 was modified and the scale of pay of the posts held by the petitioners was modified to Rs. 2000-3500. On the 7th August, 1990, the first respondent Corporation, constituted a Committee to discuss the anomalies created in the pay scale of D.M. (Tech.)/D.M. (Non-Tech.) as well as Section Officer (Tech.)/Section Officer (Non-Tech.) due to implementation of H.P.P.C recommendations. On the 8th of April, 1991, the Government of India, Department of Public Enterprises issued an Office Memorandum clarifying the status of Presidential Directives, which states:-

'PRESIDENT1AL DIRECTIVES:- These are issued by the administrative ministries to the concerned PSU's whenever the situation so warrants and are mandatory in nature. For the purpose of maintaining uniformity, such directives shall be issued in consultation with the D.P.E. if these relate to single PSU and with the concurrence of the D.P.E. if these are applicable to more than one PSU. Further, the D.P.E. could also ask the administrative ministries to Presidential Directives to one or more PSU's on policy issues requiring a uniform approach.'

9. On the 21st of August, 1991, one of the petitioners received communication from the Chief Manager (Pers.), which is in the following terms:-

'Sub: Representations dated 5.8.1991 and 13.8.1991 of Shri A.K. Vaid, PS to CMD.

As our R&P; Rules do not permit, the Competent Authority could not accede to your request for promotion to the scale of Rs. 3000-4500, However, the competent authority decided to offer you the post of DM(P) in the scale of Rs. 2000-3500 in compliance of our R&P; Rules, from the date of your option as DM(P). The seniority will be reckoned from the date you assume the charge of PM(P). Further the scale of Rs.2200-4000 for DM(P) is under dispute and has been referred to B.P.E. for clarification. On receipt of clarification in favor of DM(P), you will also be awarded the scale of Rs.2200-4000.

If the above proposal is acceptable to you, you must exercise your option by 22nd of August, 1991.

Sd/- xxx

(S.C. SOREN)

CHIEF MANAGER(PERS)

10. On the 7th of October, 1991, the first respondent wrote to the Ministry of Industry seeking a specific clarification and requesting the Ministry to confirm whether the Corporation could allow the scale of pay of Rs. 2200-4000 to the officers in the rank of D.M.(P&A;). The letter reads as under:-

'I wish to draw your kind attention towards our letter of even number dated 14.6.1991 and subsequent reminder dated 16.8.1991 on the subject cited above.

It is pointed out that according to IRCC R&P; Rules pre-revised pay scales for P.S. (Group-B), based on IIIrd Pay Commission Report was Rs.650-1200 and for D.M. (P&A;) (Group-A) was Rs. 900-1300. Both the pay scales are missing in HPPC report in respect of IRCC.

This Corporation has allocated the scale of Rs. 2000-3500 to both the posts. The officers who are against the post of D.M. (P&A;) repeatedly appealing for the scale of Rs. 2200-4000 as it is given to the officers of this rank in other Scheduled 'B'

Corporation and minimum educational qualifications prescribed for direct appointment to the post of D.M. (P&A;) is also P.G. Diploma in Personnel Management.

thereforee, you are requested to confirm whether this Corporation can allow the scale of Rs.2200-4000 to the officers in the rank of D.M. (P&A;) and scale of PS to CMD shall continue to be as Rs.2000-3500.'

11. The Anomalies Committee has not submitted its report. The petitioners who had not been given the relief as per the Presidential Directive had approached this Court for relief. It is stated in the writ petition:-

'THOUGH all the Deputy Managers in all the five wings were in the pay scale of Rs. 900-1300 (pre-revised) and though all of them were discharging the same level of duties and responsibilities, the Deputy Managers in the following wings were granted the Group-A pay scale of Rs.2200-4000:-

(a) Deputy Managers (Civil)

(b) Deputy Managers (Mechanical)

The remaining Deputy Managers (Personnel and Administration), Deputy Managers (Finance & Accounts) and Chief Draughtsman were granted only the Group-B pay scale of Rs.2000-3500. While granting only the pay scale of Rs.2000-3500 to the Deputy Managers in Personnel & Administration, Finance & Accounts and Chief Draughtsman wings, the management decided that the incumbents holding the posts of Deputy Manger (P&A;), Deputy Manager (F&A;) and Chief Draughtsman at the lime of implementation of the H.P.P.C. report in the year 1990 would be granted the personal pay scale of Rs.2200-4000 (as personal to the incumbents) and officers promoted thereafter as Deputy Manager (P&A;), Deputy Manager (F&A;) and Chief Draughtsman were given only the pay scale of Rs.2000-3500. The arbitrary decision created two types of disparities and inequalities:-

(a) The Deputy Managers of some wings were given a lower pay scale than the Deputy Managers of other wings even though all Deputy Managersare holding

Group-A posts and are discharging the same level of duties and responsibilities; and

(b) The Deputy Managers (P&A;), Deputy Managers (F&A;) and Chief Draughtsman appointed before 1990 were given the pay scale of Rs.2200-4000 while those appointed after 1990 to the same posts were given the pay scale of Rs. 2000-3500.

The second disparity is significant in the context of the fact that the pay scales came into effect from 1.1.1986 and as on 1.1.1986 those who were granted the pay scale of Rs. 2200-4000 had not been appointed as Deputy Managers at all and all of them were working in the lower posts with a lower pay scale of Rs. 1640-2900 (revised).'

12. The fact that the petitioners are holding group A posts is not disputed. It is admitted in the counter-affidavit:-

'All these officers continue' to be in Group A and according to the Presidential Directions there can be no change in the classification of posts consequent to the periodical revision of pay scales in public sector enterprises.'

13. The writ petitioners have also referred to the communication dated. the 7th of March, 1994 from the Department of Public Enterprises which has already been extracted.

14. Mr. Ex. Joseph, the learned senior counsel for the petitioners, submitted that in the light of the clear mandate of the Presidential Directive and clarification issued by the Department of Public Enterprises and the clarifications sought for by the first respondent itself, there can be no discrimination between the Deputy Managers who are holding other posts and the Deputy Managers(P&A;)/(F&A;) and Chief Draughtsman, and that discrimination brought about the first respondent in its Office Memorandum dated the 31st of July, 1990 is vocative of Articles 14 and 16 of the Constitution of India. All the public sector undertakings in India had followed the Presidential Directive and had followed the principles laid down by the Supreme Court and first respondent alone has made this invidious discrimination

affecting the pay scales of the petitioners and causing prejudice to the petitioners. It was submitted by the learned senior counsel for the petitioners, Mr. Ex Joseph, that the service conditions of the petitioners had been seriously affected by the first respondent by adopting a posture contrary to the clear mandate of Articles 14 and 16 of the Constitution of India.

sli, the learned counsel for the first respondent submitted that the burden is on the petitioners to show that the petitioners and the other Deputy Managers who are given this pay scale of Rs.2200-4000 are having the same responsibilities and there shall be equal pay, and that burden has not been discharged by the petitioners. Mr. V.K. Shali, the learned counsel for the first respondent did not dispute the position that the petitioners are holding Group A posts.

16. In the light of the materials placed on record and when it is admitted by the firstrespondent that the petitioners belong to Group A, the view taken by the first respondent that the petitioners should be given the scale of pay of Rs. 2000-3500, isclearly illegal and cannot be allowed to stand. Accordingly, the decision of the firstrespondent, Corporation, taken on the 31st of July, 1990 should be set aside and thepetitioners should be permitted to be in the pay scale of Rs. 2200-4000. Accordingly,the writ petition is allowed.

17. The decision of the first respondent dated the 31sl of July, 1990 granting the pay scale of Rs. 2000-3500 to the petitioners holding the posts of Deputy Managers (P&A;), Deputy Managers (F&A;) and the Chief Draughtsman, is set aside and the respondents are directed to grant the pay scale of Rs. 2200-4000 to the petitioners w.e.f. 1.1.1986 and grant them all consequential benefits. The first respondent shall pass appropriate orders in this behalf on or before the 31st of October, 1998.

18. There shall be no orders as to costs.