

UNION OF INDIA
v.
MAKHAN CHANDRA ROY ETC.

APRIL 22, 1997

[S.B. MAJMUDAR AND M. JAGANNADHA RAO, JJ.]

Service Law—Central Civil Services Revised Pay Rules, 1986—Pay scale hike by Tribunal unjustified—Policy decisions to be made by the concerned authorities—Decisions relating to pay scales is within the perview of the appointing authorities—Tribunal not to interfere—Constitution of India, Art. 39(d)—Equal pay for equal work.

Appellants not being satisfied with the recommendation of the Pay Commission regarding revised pay scales approached the Central Administrative Tribunal for higher pay scales. The Tribunal allowed the prayer, which was challenged before this Court.

Allowing the Appeals, this Court

HELD : 1. The Tribunal compared the earlier pay-scale of the respondent and thought it fit to grant the same hike in the pay-scales which was made available under the Revised Pay Rules to Auxiliary Nurses and Midwife to the respondent also. That exercise was totally unauthorised as it amounted to taking a policy decision which was within the domain of the authorities themselves who are the authors of the revised pay-scales. The Tribunal had committed patent error of law in passing the impugned order. When the Court turns to the Central Civil Services revised Pay Rules, 1986, it is found that the First Schedule to the said Rules framed in the light of Rules 3 and 4, item 6 Part 'A' dealing with all posts carrying present pay-scales and pay-scales of Rs. 260-400 which was revised to Rs. 950-1500. The respondent admittedly got the benefit of those revised pay-scales. But the Tribunal thought it fit to award the respondent still higher pay-scale which was made available under the Rules to the Auxiliary Nurses and Midwife. Their pay-scale is mentioned in Part B of the Schedule at item No. 4 in paragraph IX dealing with paramedical staff. The Auxiliary Nurses and Midwife who were getting the pay-scale of Rs. 260-350 and Rs. 260-400 were given a uniform higher pay-scale of Rs. 975-1540. The Tribunal compared the earlier pay-scales of Auxiliary Nur-

A ses and Midwife with the earlier pay-scales of the respondent and thought it fit to grant the same hike in the pay-scale which was made available under the Revised Pay Rules to Auxiliary Nurses and Midwife to the respondent also. The Tribunal having come to the conclusion that on merits the respondent had no case on the ground of equal pay for equal work, the O.A. ought to have been dismissed. [962-C; 961-G-H; 962-A-D]

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State of U.P. and Others v. J.P. Chaurasia & Ors., [1989] 1 SCC 121, referred to.

2. The Tribunal considered the fact that Pharmacists, Radiographers and X-Ray Technicians who are earlier getting the pay scale of Rs. 330-560 were granted a higher pay scale of Rs. 1350-2200. The same pay scale should be made available to the respondent also who was earlier getting the pay scale of Rs. 380- 560. It is difficult to appreciate this line of reasoning which appealed to the Tribunal. In the Central Civil Services Revised Pay Rules, one finds in the First Schedule I, Part B, Item No. 12 which deals with all posts carrying present pay scales wherein pay scale of 380-560 which was earlier available to the respondent is mentioned and the revised pay scale as per Revised Pay Rules is stated to be Rs. 1320-2040. This pay scale is admittedly made available to the respondent. But the Tribunal found out another pay scale mentioned in Part B of the Schedule to the Rules wherein paragraph IX deals with Paramedical staff, radiographers, X-ray Technicians and Pharmacists. Their earlier pay scale was Rs. 330-560 which was increased to Rs. 1350-2200. According to the Tribunal this pay scale should have been given to the respondent. It is difficult to appreciate how the respondent who was a Malaria Technician should be straightaway given pay scale of Radiographers or Pharmacists who are admittedly working in a different department and were doing entirely different type of work. What enhanced pay scale should be given to a particular employee is within the domain of the authorities themselves who appoint them and the Tribunal should not have ventured into this forbidden field. [963-E-H; 964-A-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10608 of 1995 Etc.

From the Judgment and Order dated 29.11.88 of the Central Administrative Tribunal, Cuttack in O.A. No. 287 of 1987.

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T.L. Viswanatha Iyer, Shashi Kiran, C.V.S. Roa, Anil Katiyar and Hemant Sharma for the Appellant. A

The Judgment of the Court was delivered by

MAJMUDAR, J. These two civil appeals on special leave have been moved by the Union of India and its officers challenging the orders passed by the Central Administrative Tribunal, Cuttack Bench at Cuttack by which each of the respondents in these appeals was given a higher pay-scale. We shall first deal with Civil Appeal No. 10608 of 1995. B

The respondent herein was working as a Laboratory Assistant under Dandakaranya Development Authority. He was granted pay-scale of Rs. 260-400. After the recommendations of the Fourth Pay Commission, the Central Government promulgated Central Civil Service Revised Pay Rules, 1986. As per these Pay Rules, respondent's pay scale got a hike. This revised pay-scale with effect from 1.1.1986 worked up to 950-1500. According to the respondent he was entitled to a still higher pay-scale and as that was not granted to him, he moved the Tribunal by Original Application. The Tribunal after hearing the contesting parties took the view that the respondent was not entitled to any higher pay-scale only on the ground of equal pay for equal work. That a higher pay-scale given to Laboratory Assistant both in the Ministry of Defence and Railways could not automatically be given to the respondent as he was a mere matriculate having only 5 weeks' training in the Central Laboratory of Indor.... While those Laboratory Assistants in the aforesaid Ministries of Defence and Railways were having better educational qualifications. On the aforesaid finding reached by the Tribunal on facts, the O.A. should have been dismissed. Instead, the Tribunal perhaps thinking that because the petitioner had moved the Tribunal, he should not go empty handed and must be given some relief from somewhere, took the view that because the Auxiliary Nurses and Midwife who were also earlier getting two scales of pay of Rs. 260-350 and Rs. 260-400 were given a revised pay-scale of Rs. 975-1540 under the same Pay Rules, the respondent should also be granted the said pay scale of Rs. 975- 1540 instead of Rs. 950-1500. In our view the aforesaid reasoning adopted by the Tribunal is totally misconceived and cannot be sustained. When we turn to the Central Civil Services Revised Pay Rules, 1986, we find in the First Schedule to the said Rules framed in the light of Rules 3 and 4, item 6 of Part 'A' dealing with all posts carrying present C D E F G H

A pay-scales and pay-scales of Rs. 260-400 which were revised to Rs. 950-1500. The respondent admittedly got the benefit of those revised pay-scales. But the Tribunal thought it fit to award to the respondent still higher pay-scale which was made available under the Rules to the Auxiliary Nurses and Midwife. Their pay-scale is mentioned in Part B of the Schedule at item No. 4 in paragraph IX dealing with Paramedical Staff. The Auxiliary Nurses and
B Midwife who were getting the pay-scale of Rs. 260-350 and Rs. 260-400 were given a uniform higher pay-scale of Rs. 975-1540. The Tribunal compared the earlier pay-scales of Auxiliary Nurses and Midwife with the earlier pay-scales of the respondent and thought it fit to grant the same hike in the pay-scale which was made available under the Revised Pay Rules to Auxiliary Nurses
C and Midwife to respondent also. In our view that exercise was totally unauthorised as it amounted to taking a policy decision which was within the domain of the authorities themselves who are the authors of the Revised Pay-scales. The Tribunal having come to the conclusion that on merits the respondent had no case on the ground of equal pay for equal work, the
D O.A. ought to have been dismissed. Our attention was also drawn by the learned Senior Counsel for the appellant to a decision of this Court reported in (1989) 1 SCC 121 (*State of U.P. and Others v. J.P. Chaurasia & Others*). In that judgment the following observations are made :

E "The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More
F often functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by
G expert bodies like Pay Commission. They would be best judge to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a commission or Committee, the court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with
H extraneous consideration."

Consequently, it must be held that the Tribunal had committed patent error of law in passing the impugned order. In the result, this appeal is allowed. The judgment and order of the Tribunal are quashed and set aside and the Original Application filed by the respondent is dismissed. However, in the facts and circumstances of the case there will be no order as to costs.

That takes us to the Civil Appeal No. 10609/95.

In this case the respondent was a Malaria Technician working with the Dandakarnaya Development Authority. His earlier pay-scale was Rs. 380-560. As per the Revised Pay Rules, 1986 his pay scale was raised to Rs. 1320-2040 with effect from 1.1.1986. The respondent felt aggrieved by the said hike as in his view he first deserved to be placed in selection grade by the authorities and then the increased pay scale for selection grade employees should have been made available to him. With that grievance he approached the same Tribunal. The Tribunal rejected his contention that he was entitled to be placed in selection grade as there was no vacancy in that grade. Once that conclusion is reached, the respondent's O.A. should have been dismissed. Instead, following the same logic which appealed to the Tribunal in the earlier case, the Tribunal thought that some relief atleast should be given to the respondent who should not be turned out empty handed. With the result, the Tribunal undertook a very curious unauthorised exercise. The Tribunal considered the fact that Pharmacists, Radiographers and X-Ray Technicians who were earlier getting the pay scale of Rs. 330-560 were granted a higher pay scale of Rs. 1350-2200. The same pay scale should be made available to the respondent also who was earlier getting the pay of Rs. 380-560. It is difficult to appreciate this line of reasoning which appealed to the Tribunal. When we turn to the Revised Pay Rules, we find in schedule I, Part B, item No. 12 which deals with all posts carrying present pay scales wherein the pay scale of Rs. 380-560 which was earlier available to the respondent is mentioned and the revised pay scale as per Revised Pay Rules is stated to be Rs. 1320-2040. This pay scale is admittedly made available to the respondent. But the Tribunal found out another pay scale mentioned in part B of the Schedule to the Rules wherein in paragraph IX dealing with Paramedical staff, radiographers, X- ray Technicians and Pharmacists are referred to. Their earlier pay scale was Rs. 330-560 which was increased to Rs. 1350-2200. According to the Tribunal this pay scale should have been given to the respondent. It

- A is difficult to appreciate how the respondent who was a Malaria Technician should be straightaway given pay scale of Radiographers or Pharmacists who are admittedly working in a different department and were doing entirely different type of work. What enhanced pay-scale should given to a particular employee is within the domain of the authorities themselves who appoint them and the Tribunal should not have ventured in this forbidden field.
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Consequently, the decision of the Tribunal in this case also cannot be sustained. In the result this appeal is also allowed. The judgment and order of the Tribunal are set aside and the O.P. filed by the respondent is dismissed. In the circumstances of the case, there will be no order as to costs.

C

I.M.A.

Appeal allowed.