

A M.P. SINGH, DY. SUPDT. OF POLICE C.B.I. & ORS.

v.

UNION OF INDIA AND ORS.

JANUARY 16, 1987

B [E.S. VENKATARAMIAH AND K.N. SINGH, JJ.]

C *Equality clause—Equal pay for equal work—Whether the principle applies to the payment of Special Pay as well—Direct Recruits (Non—deputationists) in the C.B.I. paid lesser special pay from Sub—Inspectors to Dy. Suptd. of Police cadre than the deputationists from the State cadre—Whether discriminatory and offends Article 14 of the Constitution.*

D There are two classes of officials amongst those who are holding the posts of Sub—Inspectors, Inspectors and Deputy Superintendents of Police in the Central Bureau of Investigation namely (i) who are directly recruited and (ii) those who have been drawn from various State cadres on deputation basis. The deputationists are paid Deputation Allowance as compensation for the temporary displacement from their parent cadres occasioned by their deputation to the Central Bureau of Investigation. Pursuant to the recommendation of the Third Pay Commission as accepted by the Central Government both the Direct recruits and

E “deputationists” in the rank of Sub—Inspectors and Inspectors were paid equal rate of Special Pay from 1.7.73, while the Dy. Superintendents were not paid anything. Both the direct recruits and the deputationists posted in one of the Central Units were granted Special Pay considering the special nature of duties of investigating officers, by its

F letter No. 203/13/76—AUD—II dated 21.6.1976. But the Special Pay granted to the deputationists were more in all the three categories. Having failed to get the disparity in the payment of Special Pay set aright at the departmental level, the aggrieved direct recruits (non deputationists) have approached the Supreme Court for justice through their petitions under Article 32 of the Constitution.

G Allowing the petitions, the Court,

H HELD: It is well settled by several decisions of the Supreme Court that in order to pass the test of permissible classification of persons belonging to the same class into groups for purposes of differential treatment two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes

persons who are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the law which brings about discrimination between the two groups. [1017G-H; 1018A]

The Special Pay that was being paid to all the officers in the cadre of Sub-Inspectors, Inspectors and Deputy Superintendents of Police in the Central Investigating Units of the Central Bureau of Investigation has nothing to do with any compensation for which the deputationists may be entitled either on the ground of their richer experience or on the ground of their displacement from their parent departments in the various States, but it relates only to the arduous nature of the duties that is being performed by all of them irrespective of the fact whether they belong to the category of the 'deputationists' or to the category of 'non-deputationists'. That being the position, the classification of the officers working in the said cadres into two groups, namely, deputationists and non-deputationists for paying different rates of Special Pay does not pass the test of classification permissible under Articles 14 and 16 of the Constitution of India since it does not bear any rational relation to the object of classification. [1022D-F]

The Court directed the Central Government to pay the non-deputationists who have been working in the cadres of Sub-Inspectors, Inspectors and Deputy Superintendents of Police in the Central Investigating Units of the Central Bureau of Investigation Special Pay at the same rates at which the deputationists are being paid with effect from the date from which the decision contained in the letter of the Government of India, Cabinet Secretariat bearing No. 203/13/76-AVD.II dated 21.6.1976 came into force upto date and to pay hereafter Special Pay to all the officers (deputationists and non-deputationists) in the said cadres at the same rates.) [1022G-H; 1023A-B]

ORIGINAL JURISDICTION: Writ Petition (Civil) Nos. 13097-13176 Of 1984

(Under Article 32 of the Constitution of India).

M.S. Ganesh for the Petitioners.

V. Kanth, Ms. Halida Khatun, C.V. Subba Rao and N.S. Das Bahl for the Respondents.

The Judgment of the Court was delivered by

A **VENKATARAMIAH, J.** The petitioners in these petitions, 80 in
number, are employees of the Central Government working in the
Central Bureau of Investigation. Some of them are holding the posts of
Sub-Inspectors, some are Inspectors and the remaining are the Deputy
Superintendents of Police in the Central Investigating Units of the
B amongst those who are holding the posts of Sub-Inspectors, Inspectors
and Deputy Superintendents of Police. The first class of those officials
to which the petitioners belong consists of those who have been
recruited directly to the Central Bureau of Investigation. They are
hereinafter referred to as 'non-deputationists'. The other class of offi-
C cials in those cadres consists of those who have been drawn from
various State cadres. They are hereinafter referred to as 'deputa-
tionists'.

In this case the dispute relates to the discrimination that has been
brought about by the Central Government regarding the Special Pay
payable to the two groups of officers, namely, 'deputationists' and
D 'non-deputationists'. While a Deputy Superintendent of Police who
belongs to the category of 'deputationists' is getting Rs. 150 per month
by way of Special Pay, a Deputy Superintendent of Police who is a
non-deputationist gets Rs. 100 per month as Special Pay. Similarly
while an Inspector belonging to the former category gets Rs. 125 per
month as Special Pay, an Inspector belonging to the latter category
E gets Rs. 75 per month as Special Pay and while a Sub-Inspector belong-
ing to the former category gets Rs. 100 per month by way of Special
Pay, a Sub-Inspector belonging to the latter category gets Rs. 50 per
month. The petitioners, who are non-deputationists, claim that they
should also be paid the same Special Pay which the deputationists are
getting with effect from the date on which the deputationists com-
F menced to draw the Special Pay at higher rates.

The two groups of officers, referred to above are all working in
the 14 Branches of the Central Bureau of Investigation which are
called Central Investigating Units. It is not disputed that the two sets
of officers, namely the 'non-deputationists' and the 'deputationists' in
G the ranks of Sub-Inspectors, Inspectors and Deputy Superintendents of
Police discharge the same functions, duties and responsibilities in the
various Central Investigating Units. They have to travel to different
places for purposes of investigation into the several cases entrusted to
them. The Special pay that is being paid to the deputationists is in-
addition to the Deputation Allowance paid to them which is not admissi-
H ble to the non-deputationists. The Deputation Allowance is paid to the

deputationists as compensation for the temporary displacement from their parent cadres occasioned by their deputation to the Central Bureau of Investigation. At present a Deputy Superintendent of Police who is on deputation gets Rs. 150 per month as Deputation Allowance, an Inspector who is on deputation gets Rs. 125 per month as Deputation Allowance and a Sub-Inspector who is on deputation gets Rs. 100 per month as Deputation Allowance. It is also alleged that in the non Central Investigating Units of the Central Bureau of Investigation the rates of Special Pay paid to the officers working in the three cadres of Sub-Inspectors, Inspectors and Deputy Superintendents of Police are the same both in the case of deputationists and non-deputationists, but in the case of Central Investigating Units, however, to which the petitioners belong the deputationists in all the three ranks get Special Pay at higher rates as stated above. It would also appear that between June, 1976 and August, 1979 the Deputy Superintendents of Police belonging to the category of non-deputationists were totally denied the Special Pay of Rs. 150 per month which was being given to the Deputy Superintendents of Police who are on deputation. It is contended by the petitioners that the denial of the Special pay at the same rates at which the deputationists are being paid amounts to violation of Articles 14 and 16 of the Constitution of India.

In answer to the above claim of the petitioners it is stated on behalf of the Central Government in the counter-affidavit filed by Shri R.S. Nagpal, Under Secretary to the Government of India, Ministry of Home Affairs (Department of Personnel and Administrative Reforms) that because the State Governments had revised scales of pay of their staff including the State Police from different dates merging whole or substantial portion of the dearness allowance and because the dearness allowance and the structure of pay scales differed widely from one State to another, there could not be any comparison between the scales of pay of the deputationists and the scales of pay of the non-deputationists which had been fixed on the recommendation of the Third Pay Commission. It is further stated that the Special Pay was being paid to the deputationists at a higher rate to attract officers of high calibre from their parent departments and the arduous nature of their duties.

It is well-settled by several decisions of this Court that in order to pass the test of permissible classification of persons belonging to the same class into groups for purposes of differential treatment two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes persons who

A are grouped together from others left out of the group and that that differentia must have a rational relation to the object sought to be achieved by the law which brings about discrimination between the two groups. The Deputation Allowance which is paid to the deputationists with which the petitioners have no quarrel compensates the difficulties which the deputationists may encounter on account of their displacement from their parent departments. The Special Pay, however, is not actually paid as compensation for such displacement. This is quite evident from the recent proposal which was submitted to the Fourth Pay Commission by the Government of India. it reads thus:

C “Considering special nature of duties of Investigating Officers in Central Branches and the fact that they were to remain on extensive tours spreading about 20 days a month, the rate of special pay for deputationist officers only was raised by Rs. 50 p.m. for S.Is, Inspectors and Dy. Ss.P. They get special pay at the following rates:

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|---|---------------|-------|---------|
| D | Dy.S.P. | | Rs. 150 |
| | Inspector | | Rs. 125 |
| | Sub-Inspector | | Rs. 100 |

F There has been a demand that departmental officers posted in Central Branches should also be entitled to the same amount of enhanced special pay which has been sanctioned to the deputationists. It is considered that this demand is genuine and the Government had desired it should be projected before the Fourth Pay Commission.”

G It is clear from the foregoing proposal submitted to the Fourth Pay Commission that the Special Pay was being paid at higher rates to the deputationists not because of their displacement from the parent departments but as compensation for the arduous nature of the duties performed by them as Investigating Officers in the Central Branches which included extensive tours spreading over about 20 days a month which they had to undertake. It is not in dispute that the nature of the duties performed by the deputationists as Investigating Officers is the same as the nature of duties performed by the non-deputationists as Investigating Officers. It is significant that the said proposal which was submitted perhaps during the pendency of this Writ Petition does not

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refer to the difference in the rates of pay and dearness allowance which the deputationists were getting as members belonging to the Police departments of different States nor does it state that the Special Pay was being paid for attracting talent from the State Services. The petitioners have alleged that the non-deputationists holding the posts of Sub-Inspectors, Inspectors and Deputy Superintendents of Police are highly qualified persons and are equally talented and this allegation is not properly traversed in the counter-affidavit.

It is seen that pursuant to the recommendation of the Third Pay Commission as accepted by the Central Government both the non-deputationists and the deputationists in the ranks of Sub-Inspectors and Inspectors were being paid the same Special Pay with effect from January 1, 1973. On that occasion the Deputy Superintendents of Police of either category were not granted any Special pay. By its letter No. 203/13/76-AVD-II dated 21.6.1976 the Government of India intimated the Director, Central Bureau of Investigation its decision that the Police officers on deputation to the Central Bureau of Investigation as Deputy Superintendents of Police, Inspectors and Sub-Inspectors and posted in one of the Central Units had been granted Special Pay at the following rates with effect from the date of issue of the said order:

| | | |
|---------------|------|--------------|
| Dy. S.P. | | Rs. 150 p.m. |
| Inspector | | Rs. 125 p.m. |
| Sub-Inspector | | Rs. 100 p.m. |

By the aforesaid decision dated 21.6.1976 the Central Government disturbed the existing parity of Special Pay between non-deputationists and deputationists which it had accepted pursuant to the recommendation of the Third Pay Commission, as stated above, and commenced the discrimination complained of in this case. The Government Order dated 21.6.1976 did not give any reason as to why in the case of the deputationists alone there was an increase in the rates of Special Pay, but it is clear from its letter written on 6.7.1976 by Shri D. Sen, Director of the Central Bureau of Investigation to the Superintendents of Police of the Central Units that the Higher Special Pay had been sanctioned in order to compensate to a certain extent the arduous nature of the job which the Investigating Officers had to perform. He stated in the course of the letter thus:

“Recently we have been able to get higher special pay sanctioned for all the Investigating officers posted in

A Central Units. This should compensate them to a certain extent for the arduous nature of the job which they have to perform in a Central Unit”

B A reading of that letter does not, however, suggest that the Director had noticed that the rates of Special Pay had been increased only in the case of deputationists and not in the case of non-deputationists. By its letter dated 2.2.1978 Shri P.C. Sharma, who was then working as Sub-Inspector (now Inspector and one of the Petitioners herein) submitted a representation to the Director requesting that he might also be granted enhanced rate of Special Pay at par with the deputationist Sub-Inspectors posted in Central Units with retrospective effect. He pointed out that he had been working in one of the
C Central Units and that he had been performing the same duties as any of the deputationist officers in the Central Units. He further stated that the job requirements in the Central Units did not make any distinction between a deputationist and a non-deputationist Sub-Inspector and that often it had been found that assignments of complicated
D nature had been entrusted to the non-deputationists. Similar representations were made by other Sub-Inspectors and Inspectors who are petitioners before us. Alongwith his letter dated 8.2.1978 the Superintendent of Police, Central Bureau of Investigation forwarded to the Central Government eight such representations for the grant of Special Pay at the enhanced rates. On 22.2.1978 the Ministry of Home
E Affairs intimated the Superintendent of Police, Central Bureau of Investigation that the question of grant of Special Pay to the non-deputationist Inspectors and Sub-Inspectors of the Central Bureau of Investigation working in the Central Branches at the same rates at which it was then admissible to the deputationist officers of the corresponding ranks had already been taken up with the Department of
F Personnel & Administrative Reforms and that the Government decision in that regard was still awaited. On 27.8.1979 the Government of India sanctioned with immediate effect a Special Pay of Rs.100 per month to the non-deputationist Deputy Superintendents of Police in the Central Bureau of Investigation. The question of maintaining parity in the matter of payment of Special Pay between the deputationists and the non-deputationists was taken up for consideration at
G the meeting of the CBI Staff Council presided over by the then Home Minister Shri Zail Singh. The Home Minister assured the Staff Council that the request of the non-deputationists would be considered sympathetically by the Government and an early decision would be taken. The said question was again raised at the meeting of the Staff
H Council on the 30th October, 1982 and at the meeting held on

17.1.1983. On 11.2.1983 the Home Department again wrote to the Superintendent of Police, Central Bureau of Investigation that the question of granting of Special Pay to the non-deputationists in the Central Bureau of Investigation at the rates applicable to deputationists was still under consideration with the Government and that its decision would be communicated as and when it was taken. Again on 26.3.1984 the Home Department addressed a letter to all the Superintendents of Police on the subject of Special Pay. It reads thus:

No. A.-11019/6/80-IWSU
 Government of India
 Ministry of Home Affairs
 Department of Personnel & A.R.
 C.B.I., Kotah House Hutments,
 New Delhi

Dated 26.3.84

To

The Superintendents of Police,
 Central Bureau of Investigation,
 All Central Units located in Delhi

Subject: Grant of special pay of the enhanced rates to the non-deputationist Dy. Ss. P., Inspectors and S.Is. working in the Central Branches.

* * * * *

Sir,

I have the honour to say that of late a number of representations have been received from departmental officers of the level of S.Is. to Dy. Ss. P. working in the Central Units, requesting for special pay at par with the deputationist officers. I am to inform you that a proposal has already been sent to the Government requesting them to sanction higher rates of special pay for non-deputationists Dy. Ss.P., Inspectors and S.Is. while working in the Central Units of C.B.I. The decision when taken will be communicated to all concerned. You are requested to inform all departmental officers suitably in the matter.

Yours faithfully,

Sd

(R.S. Nagpal)

Administrative Officer(E)

C.B.I."

A It is thus seen that at no point of time there was any suggestion
by the Government of India that the non-deputationists were not
entitled to the same treatment with the deputationists as regards
Special Pay. On the other hand, the letter addressed to the Fourth Pay
Commission by the Home Department which is referred to above
clearly stated that: "There has been demand that departmental offi-
B cers posted in Central Branches should also be entitled to the same
amount of enhanced special pay which has been sanctioned to depu-
tationists. It is considered that this demand is genuine and the Govern-
ment had desired it should be projected before the Fourth Pay Com-
mission". There appears to be thus no rational explanation for the
Government taking up a contrary stand in the counter-affidavit filed
C before us while it had accepted that the demand made by the petition-
ers, who were the departmental officers posted in the Central Units,
was a genuine one.

From the foregoing discussion it emerges that the Special pay
that was being paid to all the officers in the cadre of Sub-Inspectors,
D Inspectors and Deputy Superintendents of Police in the Central
Investigating Units of the Central Bureau of Investigation has nothing
to do with any compensation for which the deputationists may be
entitled either on the ground of their richer experience or on the
ground of their displacement from their parent departments in the
various States, but it relates only to the arduous nature of the duties
E that is being performed by all of them irrespective of the fact whether
they belong to the category of the 'deputationists' or to the category of
the 'non-deputationists'. That being the position, the classification of
the officers working in the said cadres into two groups, namely,
deputationists and non-deputationists for paying different rates of
Special Pay does not pass the test of classification permissible under
F Articles 14 and 16 of the Constitution of India since it does not bear any
rational relation to the object of classification.

In these circumstances, it is difficult to accept the stand of the
Central Government justifying the discriminatory treatment meted
out to the non-deputationists as regards payment of Special Pay.

G We, therefore, direct the Central Government to pay the non-
deputationists who have been working in the cadres of Sub-Inspectors,
Inspectors and Deputy Superintendents of Police in the Central
Investigating Units of the Central Bureau of Investigation Special Pay
at the same rates at which the deputationists are being paid with effect
H from the date from which the decision contained in the letter of the

Government of India, Cabinet Secretariat bearing No. 203/13/76-
AVD.II dated 21.6.1976 came into force upto date and to pay here-
after Special Pay to all the officers (deputationists and non-depu-
tationists) in the said cadres at the same rates. The arrears of Special
Pay payable upto date shall be paid within four months from today.

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The Writ Petitions are accordingly allowed. No costs.

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S.R.

Petitions allowed.