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UNION OF INDIA AND ORS.

v.

SHRI RAM GOPAL AGARWAL AND ORS.

JANUARY 15, 1998

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[K. VENKATASWAMI AND A.P. MISRA, JJ.]

*Service Law :*

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*Central Reserve Police Force Act, 1949: Ration money—Sanctioned to combatised staff but not to non-combatised ministerial and non-gazetted staff who had not opted for combatised staff—Claim for grant of ration money by non-gazetted non-combatised hospital staff—Allowed by Tribunal—On appeal, held, the Tribunal erred in equating both the classes under the principle of “Equal pay for equal work”—The terms and conditions of services of combatised and non-combatised staff are totally different—Neither a case of*

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*“equal pay for equal work” nor a case of discrimination or violation of the Constitution—Constitution of India, 1950; Articles 14 and 16.*

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The respondents were non-gazetted non-combatised hospital staff working with the Central Reserve Police Force. The services of the respondents were governed by the Central Civil Services Rules, whereas the combatised personnel were governed by the Central Reserve Police Force Act, 1949. The non-gazetted personnel of Central Reserve Police Force including ministerial staff were sanctioned ration money when they were working in the operational areas. This concession was not admissible to the ministerial and non-gazetted staff who were not combatised. The Government of India, vide letter dated 20th February, 1981 converted the civilian posts of non-gazetted ministerial staff into combatised staff. The civilian and hospital staff were given option to choose for combatised staff. The respondents did not exercise the option and remained in the civilian posts. As per the pay commission recommendations, the Govt. sanctioned the ration money only to the non-gazetted combatised personnel and the personnel who have not opted

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for the combatised staff were not entitled to the same. However, by subsequent order dated 24th February 1989, ration allowance was restored to those who were working in the operational areas. The respondents who had not opted for combatised staff approached the Tribunal with the grievance that they were unfairly denied the benefit of grant of ration money which was available

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to combatised non-gazetted personnel. The Tribunal while allowing their

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claim quashed the letter dated 24th February 1989 and directed the appellant to pay 50 per cent of the ration allowance to the non-gazetted non-combatised staff. Hence the present appeal. A

Allowing the appeal, this Court

**HELD:** 1.1. It is neither a case of "equal pay for equal work" nor a case of discrimination or violation of articles 14 and 16 of the Constitution of India. The claim of the respondents is not sustainable and the Tribunal fell into an error by equating both classes under the principle of "equal pay for equal work". B

1.2. There is clear distinction in the terms and conditions of service, the nature of work and even tenure of service *inter se* between combatised and non-combatised personnel. The combatised personnel retire at the age of 53 while the non-combatised personnel retire at the age of 55. The nature of work, so far as combatised personnel are concerned, are arduous in nature in the operational and sensitive areas. In fact even the non-combatised personnel while working in the operational areas and such sensitive places are granted the ration allowances. C D

1.3. Even the terms and conditions of service are totally different. The combatised personnel are governed by Central Reserve Police Force Act and Rules, which is an army rule more stringent in nature while non-combatised staff is governed by the civilian law, namely, Central Civil Services Rules made by the Government of India under Article 309 of the Constitution. The question of discrimination in the matter of allowances has to be listed differently even *inter se* between those falling under class of "equal pay for equal work". In cases where some of the personnel are performing overtime duties, night duties, duties in hazardous place viz. mountain, terrain at heights or at sensitive border areas an additional allowance is made applicable for the nature of work they perform. E F

1.4. When option is given it is with clear intention of there being plus and minus points in the two categories. That by itself differentiates *inter se* between the two. Those not opting to enjoy the benefits as in the present case, to continue in service of one category upto larger length of service and not to involve in the hazardous nature of duties with stringent service conditions cannot come forward to claim the benefit of the other category also on the ground of discrimination. In fact, treating unequal to be equal itself would be discriminatory. G H

A 2. The fourth Central Pay Commission made a distinction between the two classes while recommending the ration allowance to combatised staff personnel and denying to non—combatised staff personnel for the specified area. The distinction was drawn on the basis of the report of the Pay Commission which is an expert body in this regard. It is not possible for this Court, on the basis of the affidavits filed, to come to a clear conclusion specially in contradiction to the expert body report such as IV Central Pay Commission Report, to hold it arbitrary unless there are cogent facts and reasons brought before this court, which is not there in the present case. There is nothing in the report to deviate from the said opinion and to hold the same to be discriminatory or violative of Articles 14 and 16 of the Constitution of India.

C *State of U.P. and Ors. v. J.P. Chaurasia & Ors.*, [1989] Vol. I SCC 121, referred to.

D 3. The amount already paid to the respondents in terms of the order of this Court or by the order of Tribunal would not be recovered.

*Randhir Singh v. Union of India & Ors.*, AIR (1982) SC 879, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4368 of 1991.

E From the Judgment and Order dated 30.3.90 of the Central Administrative Tribunal, Gauhati Bench in O.A. No. 17/88.

Jayant Das, Hement Sharma and P. Parmeswaran for the Appellants.

F Mohan Pandey for the Respondents.

The Judgment of the Court was delivered by

MISRA, J. Delay condoned in C.C. No. 20506.

G Special leave granted.

H The Civil Appeal No. 4368 of 1991 is filed against the order dated March 30, 1990 passed by the Central Administrative Tribunal, Gauhati Bench, Gauhati, by virtue of which the order contained in letter No. R-IV 1/87 Orp/CRPF/EP-IV dated February 24, 1989 was quashed. Civil Appeal arising out of S.L.P. (C) No..... of (1993 (C.C.20506/93) arises out of order dated October 01.1992,

allowing the application by the respondents claiming enhancement of the allowance, directing the appellant to pay 50 per cent of the amount in terms of the judgment of the Gauhati Bench in the O.A. No. 17 of 1988 dated 30.3.1990 as aforesaid. The main matter is still pending before the Tribunal to be listed after disposal of the present appeals. The C.As. arising out of Special leave petition Nos, 502-503/96 are directed against the order of the same Tribunal by which it finally disposed of the matter with a direction to the appellant to pay 50 per cent of the ration allowance to the non-gazetted non-combatised staff also which shall be subject to the further orders to be passed by this Court.

The only question involved in all the aforesaid appeals is whether non-gazetted non-combatised staff when posted in static area that is to say non-operational area, is entitled for ration allowance or not?

The brief facts are, the concerned respondents are the members of the hospital staff working in the Central Reserve Police Force, it Based Hospital, Hyderabad. The contention of these respondents before the aforesaid tribunal and before us was that they were unfairly denied the benefit of grant of ration money, which is available to combatised non-gazetted persons of the same force. Hence the contention was to direct the Union of India to grant them ration money on par with the said staff who are working on identical terms and conditions as applicable to the aforesaid combatised non-gazetted person. The appellants have refuted this claim. The case is that non-gazetted persons of Central Reserve Police Force including ministerial staff were sanctioned ration money when they were working in operational areas. The said concession was extended to the members of the Central Reserve Police Force at a higher rate where the force is deployed on internal security duties. Further, this ration money at the rate of Rs. 250 per month was for combatised persons posted at training institutions and static formations (non-operational areas) also. This concession was not admissible to the ministerial and non-gazetted staff who were not combatised. The services of these concerned respondents are governed by the Central Civil Services Rules and other such rules as framed from time to time by the Union of India under Article 309 of the Constitution while the other category of the employees, namely, combatised personnel are governed by the Central Reserve Police Force Act. It is not in dispute that the respondents are non-combatised members of the force. The further case of the appellants is that this provision of ration money allowance was provided in the statute for the combatised forces as they were working mostly on the operational sensitive areas. It is on these reasons a distinct

A classification was made by the Government to provide allowance to one and not to others. The Ministry of Home Affairs for the first time on 15th July, 1968 introduced this scheme by granting an allowance of Rs 42/-per month to the non-gazetted personnel including ministerial and hospital staff of the Central Reserve Police Force working in certain operational areas. This amount was subsequently raised from time to time. Later in 1975 the allowances were graded in two operational areas like the State of Assam, Tripura, Mizoram, Meghalaya, Nagaland, Manipur etc. In the said areas the allowances were payable at the rate of Rs 74 whereas in West Bengal, except Darjeeling District, the ration allowance was Rs. 48. By another Circular dated 20th July, 1979 this was increased to Rs. 100 in qualifying areas. It is also not in dispute that the ministerial staff and the hospital staff in Central Reserve Police Force are the civilian staff governed by C.C.S. Rules. On 20th February, 1981, the Government of India Ministry of Home Affairs vide its letter No. O-IV-56/71 (Admn) P.P. IV converted the civilian posts of non-gazetted ministerial staff into combatised staff. The civilian and hospital staff were given option to choose combatised or not. According to the scheme, who volunteered for the combatisation would be given equivalent rank of the force, and after combatisation would be governed by the C.R.P.F. Act and Rules. The concerned respondents did not opt for combatised staff and remained in the civilian posts, that after IVth Pay Commission recommendations some major changes were made and all the combatised civilian staff were also recommended for all the benefits as to the Central Reserve Police Force Personnel. However, as per the recommendations of the 6th October, 1987 sanctioned the ration money only to the non-gazetted combatised personnel and the personnel who have not opted were not entitled for the same. All the personnel who have opted for combatisation were given appropriate equal ranks of the force and they were governed by Central Reserve Police Force Act and Rules.

F By Government letter dated 6th October, 1987, the non-gazetted staff who were not combatised including those working in operational area ceased to draw ration money which they (those working in operational area) were drawing all along since year 1968. However, with a view to restore the facility of ration money to the aforesaid categories of staff a proposal was sent to the Government recommending grant of ration money to such staff who were drawing prior to the said letter viz, those working in operational area. On 24th February, 1989, after considering the proposal the Government of India while filling counter affidavit to the application moved by the respondents before the said tribunal, stated that this relief of the applicant has now become infructuous in view of the Government decision and subsequent order dated

24th February, 1989 as the ration allowance was restored to such concerned respondents, who were working in the operational areas, which they were drawing earlier. A

Thus, after this the only grievance that remains to be adjudicated is whether the aggrieved respondents, who have not opted for combatisation, should also be paid ration money allowance even in static areas that is to say not working in sensitive or operational areas. The tribunal, however, quashed the aforesaid letter dated 24th February, 1989 of the Government which restricted the grant of such allowance only to the combatised force. B

The tribunal allowed the relief as claimed by the concerned respondents primarily on the principle of "equal pay for equal work". In support of this decision, learned counsel appearing for the concerned respondents referred to the dismissal of the S.L.P. (C) No..../92 (C.C 18847) on 24.1.1996 against the tribunal order which is similar to the present case. We find that this Special leave petition was dismissed solely on the ground of delay and not on merits. C  
Another reference was made of S.L.P. (C) No. 9605/90 which is also dismissed by this Court and the order of the tribunal was affirmed. We have perused the same. This is a case of members of nursing staff of various hospitals, CRPF, Gauhati. The petitioners were drawing uniform and washing allowance at the rate of Rs. 200 per annum and their grievance was that though the rates of uniform and washing allowance etc, have been enhanced in respect of nursing staff of other hospitals in the Ministry of Health and Family Welfare yet no such enhanced rate was made admissible the petitioners for which representations were made. The tribunal in that case relied on office Memorandum dated 4.1.1988 issued by the Government of India. Ministry of Health and Family Welfare, relating to the subject revision of rates of various allowances admissible to the nursing personnel in the Central Government. D  
The contention for the petitioners was denial of enhanced rate of allowance to the petitioners who were nurses attached to CRPF hospital discharging the same nature of work as that of nursing staff attached to any other hospital under the Ministry of Health and Family Welfare, is violative of Articles 14 and 16 of the Constitution of India. The Court found after looking into the nature of the duties of the petitioners and the nursing staff of the Government hospitals are being one and relying on AIR 1982 Supreme Court 879 *Randhir Singh v. Union of India & Ors.* held, this is the case covered by the principle of "equal pay for equal work". However, facts in the present case are different. E  
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The present case would not fall under the same category in order to test H

A the principle of "equal pay for equal work". The nature of work, the sphere  
of work duration of work and other special circumstances, if any attached to  
the performance of the duties have also to be taken into consideration. The  
principle of "equal pay for equal work" is well settled but to arrive at the  
conclusion the facts of each case has to be scrutinised with precision. In  
B the present case, it cannot be disputed that the staff working on the operational  
and sensitive areas including internal security have to perform arduous duties  
in comparison to the civilian staff working in CRPF who are not on the  
operation or such areas. It is keeping this in view first a classification and  
distinction is drawn inter se between the two classes that when performing  
C duties on such operation and sensitive areas the grant of ration money  
allowance is made admissible to both but the same is not made admissible to  
the concerned respondents not working on such operation areas etc. Learned  
counsel for the respondents argued with vehemance that even earlier such  
staff who were non-combatised when became combatised were granted the  
allowance while performing duties on non-operational areas like the earlier  
D combatised staff but the same civilian staff who did not opt for combatisation  
were excluded from ration money allowance which is discriminatory in nature.

We have heard learned counsel for the parties and we find that there  
is clear distinction in the terms and conditions of service, the nature of work  
and even tenure of service inter se between combatised and non-combatised  
E personnels. The combatised personnel retire at the age of 53 while the non-  
combatised personnel retire at the age of 55. The nature of work, so far as  
combatised personnel are concerned, are arduous in nature in the operational  
and sensitive areas. In fact even the non-combatised personnel while working  
in the operational areas and such sensitive places are granted the ration  
allowances. It is only when they are working in 'static areas there is no  
F provision for this allowance. Even terms and conditions, service conditions  
are totally different. The combatised personnels are governed by Central  
Reserve Police Force Act and Rules which is an army rule more stringent in  
nature while non-combatised staff is governed by the civilian law, namely,  
C.C.S. Rules made by the Government of India under Article 309 of the  
G Constitution. The question of discrimination in the matter of allowances has  
to be listed differently even inter se between those falling under class of  
"equal pay for equal work". In cases where some performing overtime duties,  
night duties, duties in hazardous places viz, mountain, terrain at heights or  
at sensitive border areas an additional allowance is made applicable for the  
nature of work they perform. Similarly, when option is given it is with clear  
H intention of there being plus and minus points in the two categories. That by

itself differentiates inter se between the two. Once not opting to enjoy the benefit as in the present case, to continue in service of one category upto larger length of service (55 years) and not to involve in the hazardous nature of duties with stringent service conditions cannot come forward to claim the benefit of the other category also on the ground of discrimination. In fact, treating unequal to be equal itself would be discriminatory, Thus, we conclude it is neither a case of "equal pay for equal work" nor a case of discrimination or violation of Articles 14 and 16 of the Constitution of India.

In fact this distinction is being drawn on the basis of the report of the IVth Central Pay Commission submitted, which is an expert body in this regard. It is not possible for this Court, on the basis of the affidavits filed, to come to a clear conclusion specially in contradiction to the expert body report such as IVth Central Pay Commission Report, to hold it arbitrary unless there is cogent facts and reasons brought before us, which is not in the present case. In [1989] Vol. I SCC 120, this Court observed as follows:

"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 other, evaluation of duties and responsibilities of the respective posts. More 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 the 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 expert bodies like Pay Commission. They would be the 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 extraneous consideration".

We find in the present case also the IVth Central Pay Commission making a distinction between the two classes while recommending the ration allowance to combatised staff personnel and denying to non-combatised staff personnel for the specified area.

We do not find anything on the report to deviate from the said opinion

A and for the reasons also to hold the same to be discriminatory or violative of Articles 14 and 16 of the Constitution of India. For the aforesaid reasons, the impugned orders dated 30.3.90, 1.10.92 and 23.8.94 by the Tribunal are not sustainable.

B It is further argued for the concerned respondents that during the pendency of the present Civil Appeal No. 436/91 (arising out of SLP (C) No. 15728/90) pursuant to be order passed by this Court, 50 per cent of the said allowance was paid by the appellant to the respondents and similarly by means of interim order in C.A. arising out of SLP (C).....(C.C. 20506/93), the tribunal directed to pay this 50 per cent allowance and in C.As. arising out of SLP (C) No. 502-503/96 also the tribunal finally disposed of the appeal in the same terms of paying 50 per cent of allowance to them subject to decision of this court in pending appeal. The contention is that in case this appeal is allowed the recovery will be pressed against the concerned respondents for the amount already paid and it would result in great hardship. We make it clear that the amount already paid to them in terms of the order of this Court or D by the tribunal as aforesaid would not be recovered.

Hence for these reasons we are clearly of the opinion that the claim of the concerned respondents is not sustainable and the learned tribunal fell into an error by equating both classes under the principle of "equal pay for equal work". E

Hence, we set aside the judgment and orders of the aforesaid tribunal dated 30.3.90, 1.10.92 and 23.8.94 passed in the aforesaid three appeals and uphold the order contained in the aforesaid letter dated 24th February, 1989. Accordingly, all the aforesaid appeals stand allowed in terms of the orders F passed above. Cost on the parties.

S.V.K.

Appeals allowed.