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UNION OF INDIA AND ORS.

v.

INDU LAL AND ORS.

APRIL 29, 2002

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[S. RAJENDRA BABU AND SHIVARAJ V. PATIL, JJ.]

Service Law:

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Railway Claims Tribunal Act, 1987—Section 19(2)—Presenting Officer of Junior Administrative Grade and Law Assistant—Parity in pay scale claimed by Law Assistant—Tribunal equated the posts and drew parity in their pay scales—On appeal—Held, order of Tribunal not justified.

D

Respondents, the Law Assistants who claimed to have been designated as Presenting Officer in terms of Section 19(2) of Railway Claims Tribunal Act, 1987 filed application before Central Administrative Tribunal claiming parity in pay scale on par with presenting officers of Junior Administrative Grade.

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Their case was that the post of Presenting Officer was an Ex-cadre post and appointment on such post was made from Junior Administrative Grade Officers and from Law Assistants and Chief Law Assistants; and that the disparity in the pay scale of the Presenting Officers from Junior Administrative Grade and those from Law Assistants and Chief Law Assistants resulted in hostile discrimination.

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Appellants' case was that respondents 5, 12, 13 and 14 had never been appointed as Presenting Officers; that the post of Presenting Officer was not an Ex-cadre post; and that only one Gazetted Officer of Junior Administrative Grade was appointed as Presenting Officer and other respondents were working under their supervision and nature of their duties were not the same.

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Tribunal held that all Law Assistants and Chief Law Assistants including the respondents were authorised to work as Presenting Officers, hence the respondents were entitled to parity in pay scale and directed the respondents to be placed in the pay scale of Group 'B'. Hence the present appeal.

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Allowing the appeal, the Court

HELD: 1. Tribunal was not justified in giving the directions to place the respondents in the pay scale of Group 'B', particularly in the light of Section 19(2) of the Railway Claims Tribunal Act in relation to equation of posts or drawing a parity in the pay scales. [590-B] A

2. The case that there is an ex-cadre of Presenting Officer is misconceived. When a matter is to be represented before the Tribunal the railway administration may authorise a legal practitioner to appear on their behalf or in appropriate cases any of its officers to act as Presenting Officers on their behalf. Thus the authorisation of an officer to present a case before the Tribunal will not convert them as a separate cadre of officers. [589-F] B

Union of India v. P.V. Hariharan, [1997] 3 SCC 568; *Union of India v. Makhan Chandra Roy*, [1997] 11 SCC 182; *State of Maharashtra v. Chandrakant Anant Kulkarni*, [1981] 4 SCC 130 and *State of U.P. v. J.P. Chaurasia*, [1989] 1 SCC 121, referred to. C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2668 of 1998. D

From the Judgment and Order dated 1.1.97/2.1.97 of the Central Administrative Tribunal, Lucknow in O.A. No. 53 of 1993.

N.N. Goswami, S. Wasim A. Qadri, Anil Katiyar and Arvind Kumar Sharma for the Appellants. E

M.N. Rao, Annam D.N. Rao and K.M.M. Khan for the Respondents.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Applications were filed under the Administrative Tribunal Act, 1985 by the respondents claiming parity between the Presenting Officer of the Junior Administrative Grade and the Law Assistants. The respondents claimed that they were designated as Presenting Officers in terms of Section 19(2) of the Railway Claims Tribunal Act, 1987 [hereinafter referred to as 'the Act']. F G

The Central Administrative Tribunal, Lucknow Bench [hereinafter referred to as 'the Tribunal'] enquired into the matter and in spite of resistance from the appellants' side held that all Law Assistants and Chief Law Assistants including the respondents were authorised to work as Presenting Officer; that a reading of Section 19(2) of the Act indicates that the Presenting Officer H

A was equated with the legal practitioner; that the Junior Administrative Grade Officers also had the power to compound cases out of court and give direction about the conduct of the cases before the court; that they were performing duties entrusted to them and the applicants who were law graduates or having degree of Master of Law were not allowed to claim even the ordinary grade of a Gazetted Officer and they are placed in Group 'C' category; that they are entitled to the relief they have sought for and granted the same by giving the following directions:

C "(a) The applicants who have been placed in one class of Presenting Officers, be placed in the pay scale of Group 'B' immediately, and the same should be given to them w.e.f. the date of filing of O.A. which is 25.1.1993.

(b) The respondents shall constitute a Committee of experts within one month from the date of communication of this order to consider-

D (i) a suitable designation for the applicants and other similarly placed officers authorised to act as Presenting Officers before the Railway Claims Tribunal, and also placed in Group 'B' as per our order in sub-para (a) hereinbefore,

E (ii) the criteria and procedure, if necessary, for their regularisation in Group 'B',

(iii) the avenues of further promotions of the applicants and other similarly placed persons, with suitable grades thereof,

(iv) the claim for kit and library allowance.

F (c) The Committee shall hear the applicants and similarly situated other persons and finalise its recommendations within three months.

G (d) the respondents shall take a decision on those recommendations within a further period of three months from the date of submission of the report of the Committee. While taking action as per direction in this sub-para, the respondents may also take note of recommendations if made in this regard, of Vth Pay Commission."

Before we can consider the various aspects dealt with by the Tribunal, we may notice a few decisions which have bearing on the present matter.

H In *Union of India v. P.V. Hariharan*, [1997] 3 SCC 568, this Court observed that the courts or tribunals ought not to interfere with pay scales

without proper reasons and without being conscious of the fact that fixation of pay is not their function. Change of pay scale of a category has a cascading effect, when several other categories similarly situated, would put forward their claims on the basis of such change, which will lead to serious problems. Unless it can be clearly brought out that they were carrying on identical work and there is a clear case of hostile discrimination, there would be no justification for interference with the fixation of pay scales.

In *Union of India v. Makhan Chandra Roy*, [1997] 11 SCC 182, it was reiterated that the equation of post or pay must be left to the executive Government and must be determined by expert bodies like Pay Commission. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

In *State of Maharashtra v. Chandrakant Anant Kulkarni*, [1981] 4 SCC 130, it was observed that the matter of equation of posts is purely an administrative function and such matter should be left to the concerned Government. Any revision of pay would be an exercise which is totally unauthorised and would amount to taking a policy decision which is within the domain of the authorities themselves who are the authors of the pay scales or revision thereof.

In *State of U.P. v. J.P. Chaurasia*, [1989] 1 SCC 121, this Court observed that the matter of pay scale does not just depend upon either the nature of work or volume of work done as primarily what is needed to be noticed is evaluation of duties and responsibilities of the respective posts. More often than not, functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance, like the responsibility attached to a particular office. In such cases, it would not be open to the court to consider whether the equation of posts made by the Government or the pay scales accorded to them is right or wrong, as such matters are exclusively within the province of the Government. Perhaps the only question the court can enquire into is whether appropriate policy has been adopted by the Government which does not result in hostile discrimination which is a very narrow and limited area of enquiry. When equation of posts had been done on some basis, the same should not be altered so as to equate with some other post and enhance their pay scales.

The purpose of the Act was to provide establishment of a Railway Claims Tribunal for enquiring into and determining claims against Railway Administration for loss, destruction, damage, deterioration or non-delivery of

A animals or goods entrusted to it to be carried by Railway or for refund of freight or rate or compensation for death or injury to the passengers occurring as a result of the railway accidents and for incidental matters. Section 19(2) provides for representation before the Tribunal either through legal practitioner or any officer of Railway Department who is authorised by the Railway Administration.

B

The respondents claim that in pursuance of the powers under sub-section (2) of Section 19 of the Act, Group 'A' officers as well as all those who were previously working as Law Assistants and Chief Law Assistants were appointed by the Railway Administration on a common ex-cadre post designated as Presenting Officers to present the cases before the Tribunal and they can be appointed as Presenting Officers; that though they have been designated as Presenting Officers, they have been deprived of pay, grade, status, perks and other benefits being given to such Railway Officers and they were still treated as subordinates and not officers; that they had similar nature of duties as that of the Presenting Officers but there is a gross disparity in their pay; that while one set of Presenting Officers are getting pay scale in the grade of Rs. 3700-5100, the second set of Presenting Officers are getting pay scale in the grade of Rs. 1600-2600 and Rs.2000-3200 and this, they contended, would result in hostile discrimination; that their initial mode of recruitment is through departmental selection amongst the staff possessing a bachelor of laws degree and five years experience of working in the Railways and through Railway Service Commission amongst the candidates holding Bachelor of laws degree and at least three years of practice at bar and depending on the length of service Law Assistants are called the Chief Law Assistants who are in the pay scale of Rs. 2000-3200; that the nature of work of both the posts remains the same; that prior to the transfer of the cases to the Tribunal, all cases were handled and conducted before courts by the Railway Advocates, who were appointed by the Railway Administration for the said purpose and the only duty of the Law Assistants and Chief Law Assistants were to administratively assist the Railway Advocates and all the legal work were to be done/conducted by the Railway Advocates and the Law Assistants and the Chief Law Assistants were not required to appear before the court; that now there are only 8 Railway Advocates to conduct specific cases and the Law Assistants and the Chief Law Assistants were appointed as Presenting Officers under Section 19(2) of the Act to conduct all the rest of the cases whereas there were 150 Railway Advocates previously appointed have been reduced to only 8 advocates; that they have also to

H coordinate with different sections or departments of the Railways to secure

the necessary data for preparation of the written statements/ replies, procuring of evidence, giving legal opinion in cases, to decide whether to contest or settle the case out of court, to evaluate and examine decrees and other official administrative work; that they also drafted pleadings and advanced arguments which involve professional work of great skill and they are not paid the appropriate emoluments thereto; that their claim in substance was to convert their Group 'C' Presenting Officer to Group 'B' gazetted status; to pay practising allowance; to pay kit allowance and to accord benefits commensurate with the post.

Factually it was averred on behalf of the appellants that respondents Nos. 5, 12, 13 and 14 were never authorised to represent the cases in the Tribunal and have never represented before the Tribunal or any other court and, therefore, their claim that they were appointed as Presenting Officers would not be correct. The post of Presenting Officer in the Railways is not an ex-cadre post. Even Junior Administrative Officer of the Indian Railway Traffic can be posted as a Presenting Officer and it cannot be said that the Law Assistants or Chief Law Assistants have been appointed as Presenting Officers and the nature of duties are not the same.

The provisions of Section 19(2) reads as follows:

"A railway administration may authorise one or more legal practitioners or any of its officers to act as Presenting Officers and every person so authorised by it may present its case with respect to any application before the Claims Tribunal."

When a matter is to be represented before the Tribunal, the railway administration may authorise a legal practitioner to appear on their behalf or in appropriate cases any of its officers to act as Presenting Officers on their behalf. Thus the authorisation of an officer to present a case before the Tribunal will not convert them as a separate cadre of officers. Thus, the whole case put forth before the Tribunal that there is an ex-cadre of Presenting Officer is misconceived. The factual position is that only one Gazetted Officer of Junior Administrative Grade was appointed as Presenting Officer and the other respondents were working under the supervision and guidance of such officer. He has full administrative control over them and they do not have similar nature of duties and at no stage these officers were authorised to act independently and had to get the approval for every act done by them except for arguments in the Tribunal and they were also to get guidance from Junior Administrative grade Presenting Officer, written statement to be filed in the

A Tribunal was to be prepared by the concerned Law Assistants and Chief Law Assistants but was approved by the Presenting Officer.

On the overall consideration of the matter, we do not think that the Tribunal was justified in giving the directions as aforesaid, particularly in the light of the law to which we have adverted to in relation to equation of posts or drawing a parity in the pay scales. Hence this appeal stands allowed, the order of the Tribunal is set aside and the applications filed by the respondents before the Tribunal stand dismissed. No costs.

K.K.T.

Appeal allowed.