

A UNION OF INDIA AND ANOTHER

v.

RAJ KUMAR JHA AND OTHERS

(Civil Appeal Nos. 1585-1586 of 2017)

B SEPTEMBER 12, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Service law:

C *Seniority – Respondent-officers had been serving in DANIPS since long – They got a lateral induction into IPS based on their merit and seniority – While inducting them into IPS, they were given a year of allotment and placed below the direct recruits of that year – High Court held that after the introduction of the Sixth Pay Commission Report, the seniority will depend on the grade pay and that relevant rules are to be accordingly amended so as to remove*
D *the alleged discrepancy with regard to the fixation of seniority – Held: The fixation of seniority based on grade pay is among the officers inter se of the same service and it has nothing to do with the grade pay in the starting scale of direct recruits in a different service, i.e. IPS in the instant case – Merely because an officer in DANIPS*
E *working since 1987 is getting a higher pay and grade pay on account of his long service and that pay band being protected while induction to IPS, that by itself will not clothe him with a right to claim seniority above the entire direct recruits of several years who naturally would have been only on a lesser pay band having been*
F *in service only after direct recruitment.*

Seniority – Fixation of – The Pay Commission Report has nothing to do with the fixation of seniority in a service – That is governed by the rules of the service

Allowing the appeals, the Court

G **HELD: 1. According to the respondent officer, seniority on a post will solely depend on the grade pay, meaning thereby, no junior officer will draw a higher pay on rationalization of the grade pay and hence the justification for the consequential fixation of seniority based on the grade pay. There is a fundamental fallacy**

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in this argument. There are umpteen number of situations where
a senior officer in a service will be drawing a lesser pay than the
junior. The instant case is a classic example. The respondent-
officers who had been serving long elsewhere (since 1987 in the
DANIPS), got a lateral induction into IPS based on their merit
and seniority. While inducting them into IPS, they were given a
year of allotment and placed below the direct recruits of that year.
The officer who had been working in a different service gets pay
protection while getting inducted to IPS and necessarily that
officer will be drawing a higher pay than the direct recruit to IPS
of the year concerned. His pay band and grade pay would also be
different. The grade pay is to operate among the officers of the
service prior to induction and not *qua* the officers belonging to a
different service after the induction. In other words, the fixation
of seniority based on grade pay is among the officers *inter se* of
the same service and it has nothing to do with the grade pay in
the starting scale of direct recruits in a different service, i.e. IPS
in the instant case. The whole scheme of grade pay is to operate
only *qua* different posts within the same service. [Paras 12, 13]
[672-F-H; 673-A-C, E]

2. The Pay Commission Report has nothing to do with the
fixation of seniority in a service. That is governed by the rules of
the service. Even otherwise, the Terms of Reference clearly
indicate that the Commission was only called upon to examine
the principles, the date of effect thereof that should govern the
structure of pay, allowances and other facilities/benefits whether
in cash or in kind etc. Unfortunately, this crucial distinction was
not noticed by the High Court while answering the question that
was formulated "*Can a junior officer draw higher pay, more
particularly grade pay, than his senior?*". There are umpteen
such situations where a junior officer would draw higher pay,
including the grade pay. There is no dispute that the seniority in
IPS is to be fixed on the basis of the length of service in IPS. It
cannot depend on the service rendered by an officer in a different
Service prior to induction to IPS. That will be cutting at the root
of the fundamental principles on the fixation of seniority. [Para
14] [673-F-G; 674-A]

A **3. It is well settled that the Court cannot direct for any legislation. [Para 15] [674-A-B]**

Manoj Narula v. Union of India (2014) 9 SCC 1 :
[2014] 9 SCR 965 – followed.

B **4. The seniority in IPS will depend on the date of induction to IPS and it cannot be based on the length of service in any other Service prior to the induction. The direction issued by the High Court to amend the provisions of Indian Police Service (Appointment by Promotion) Regulations, 1955 and the Indian Police Service (Pay) Rules, 2007 is set aside. [Para 16] [674-B-C]**

Case Law Reference

[2014] 9 SCR 965 followed Para 15

D **CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.1585-1586 of 2017.**

From the final Judgment dated 22.04.2013 passed by the High Court of Delhi at New Delhi in C.W.P (C) No.2683 of 2012 and 7710 of 2012 respectively.

E **Ranjit Kumar, SG, Ms. Binu Tamta, Ms. Shirein Khajuria, B. Krishna Prasad, Advs. for the Appellants.**

V. Giri, Sr. Adv., Santosh Kumar, Madhurendra Sharma, Rajiv Ranjan Mishra, V. Sushant Gupta, Mushtaq Ahmad, Advs. for the Respondents

F **The Judgment of the Court was delivered by**

G **KURIAN, J. 1. The Union of India is before us aggrieved by the judgment of the High Court of Delhi. They had approached the High Court challenging the order passed by the Central Administrative Tribunal, New Delhi (hereinafter referred to as “the Tribunal”). The matter pertains to the induction of the first respondent and another to Indian Police Service (for short “IPS”), their regularization and seniority.**

H **2. Mr. Jha and Mr. Choudhary, who joined the National Capital of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Police Service (DANIPS) in 1987, were**

regularized with "selection grade" pay in 1995 after completion of 8 years of service. They became eligible for promotion to Junior Administrative Grade-II in the year 2000 and to Junior Administrative Grade-I (hereinafter referred to as "JAG-II and JAG-I") in 2007. However, they were promoted to the said posts only in 2007 and 2010 respectively and that too on ad-hoc basis. They were not regularized as the State failed to conduct regular DPC for the same. In the meantime, the DPC for preparation of Select List for induction of DANIPS officers to IPS was initiated and the Respondents were asked to submit their unconditional willingness for induction. The respondents approached the Central Administrative Tribunal, Principal Bench, New Delhi on the ground that there were discrepancies in the various Rules governing promotion to IPS and they prayed for retrospective regularization of their service in JAG-II and JAG-I so that they may not suffer any prejudice while getting inducted to IPS.

3. The Tribunal directed the State to convene the DPC and complete the process for promotion to JAG-II and JAG-I for the relevant years and also to grant their JAG-II and JAG-I regular promotion expeditiously. The Tribunal also required Mr. Jha and Mr. Choudhary to furnish the unconditional willingness and upon receipt of the same, the State was directed to offer them the induction to IPS.

4. The Appellant- State, aggrieved by the said Order, approached the High Court of Delhi. In the meantime, in April 2012, the Ministry of Home Affairs issued orders appointing Jha and Choudhary to JAG- II in the scale of Rs. 15,600-39,100 in PB-3 with Grade pay of Rs. 7,600 w.e.f. 01.07.2007. And in July 2012, the Ministry of Home Affairs issued orders appointing Jha and Choudhary to JAG- I in the scale of Rs.37,400-67,000 in PB-4 with Grade pay of Rs.8,700 w.e.f. 01.07.2008. Therefore, as far as the question of regularization is concerned, nothing survives as of now.

5. The High Court, in the impugned order dated 22.04.2013, having considered all the relevant facts and legal provisions dealt mainly with three issues. One was with respect to the challenge against the decision of the Tribunal to the extent that it directed the Ministry of Home Affairs to induct Jha and Choudhary to IPS despite the fact that they had not filed their unconditional willingness within the prescribed time. The second was regarding the regularization of the Officers in JAG-II and JAG-I.

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A Both these questions no longer require adjudication as the officers have been granted regularization with appropriate pay by the Orders of the Ministry of Home Affairs dated 17.04.2012 and 19.07.2012. Their induction to IPS was also cleared.

B 6. The third question that the High Court dealt with is the seniority of the Officers on induction into IPS. The appellant lost before the High Court. Thus, the surviving dispute is only with regard to one finding by the High Court that after the introduction of the Sixth Pay Commission Report, the seniority will depend on the grade pay and that relevant rules are to be appropriately amended as per the directions issued by the High Court.

C 7. Hence, the following are the issues to be addressed:

(i) Whether the seniority of an officer inducted to IPS will depend upon his grade pay?

D (ii) Whether the High Court is justified in issuing a direction to amend the rules so as to remove the alleged discrepancy with regard to the fixation of seniority?.

E 8. The whole basis of the finding and consequential direction issued by the High Court rests on the Sixth Pay Commission Report. The High Court has taken the view that the Sixth Pay Commission Report having been accepted *in toto*, on implementation of the Report, the seniority as well has to be re-fixed based on the grade pay.

9. Necessarily, we hence, have to refer to the Sixth Pay Commission Report published in March, 2008.

F The Terms of Reference of the Commission read as follows:

“1.1.2 The Terms of Reference of the Commission are as under:

G To examine the principles, the date of effect thereof that should govern the structure of pay, allowances and other facilities/benefits whether in cash or in kind to the following categories of employees:-

1. Central Government employees – industrial and non-industrial.

2. Personnel belonging to the All India Services.

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3. *Personnel belonging to the Defence Forces.* A
 4. *Personnel of the Union Territories.*
 5. *Officers and employees of the Indian Audit and Accounts Department; and*
 6. *Members of the regulatory bodies (excluding the RBI) set up under Acts of Parliament.* B
 - B. *To transform the Central Government Organisations into modern, professional and citizen-friendly entities that are dedicated to the service of the people.*
 - C. *To work out a comprehensive pay package for the categories of Central Government employees mentioned at (A) above that is suitably linked to promoting efficiency, productivity and economy through rationalization of structures, organizations, systems and processes within the Government, with a view to leveraging economy, accountability, responsibility, transparency, assimilation of technology and discipline.* C D
 - D. *To harmonize the functioning of the Central Government Organisations with the demands of the emerging global economic scenario. This would also take in account, among other relevant factors, the totality of benefits available to the employees, need of rationalization and simplification, thereof, the prevailing pay structure and retirement benefits available under the Central Public Sector Undertakings, the economic conditions in the country, the need to observe fiscal prudence in the management of the economy, the resources of the Central Government and the demands thereon on account of economic and social development, defence, national security and the global economic scenario, and the impact upon the finances of the States if the recommendations are adopted by the States.* E F
 - E. *To examine the principles which should govern the structure of pension, death-cum-retirement gratuity, family pension and other terminal or recurring benefits having financial implications to the present and former Central Government employees appointed before January 1, 2004.* G
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- A *F. To make recommendations with respect to the general principles, financial parameters and conditions which should govern payment of bonus and the desirability and feasibility of introducing Productivity Linked Incentive Scheme in place of the existing ad hoc bonus scheme in various Departments and to recommend specific formulae*
- B *for determining the productivity index and other related parameters.*
- C *G. To examine desirability and the need to sanction any interim relief till the time the recommendations of the Commission are made and accepted by the Government."*

(Emphasis supplied)

10. Chapter 2.2 deals with General Recommendations on Pay Structure and Fixation. 2.2.11 deals with Promotions in the pay bands. The paragraph reads as follows:

- D "2.2.11 Under the system of running pay bands being recommended by the Commission, all the employees belonging to the aforesaid 4 categories will be placed in distinct running pay bands. At the time of promotion from one post to another in the same running pay band, the grade pay (being a fixed amount attached to each post in the hierarchy) attached to posts at
- E different levels within the same running pay band will change. Additionally, increase in form of one increment will also be given at the time of promotion. Rates of grade pay have been generally computed at the rate of forty percent of the maximum of the corresponding pre-revised pay scale which is rounded off to the next multiple of hundred. In a few cases, the rates of grade pay have been computed differently. This was necessary to fit the system of grade pay in the scheme of revised running pay bands. Grade pay will determine the status of a post with (apart from the two apex scales of Secretary/equivalent and Cabinet Secretary/equivalent that do not carry any grade pay) a senior post being given higher grade pay. Grade pay being progressively higher for successive higher posts, the employees on promotion will get monetary benefit on promotion in the form of the increased grade pay apart from the benefit of one additional increment. In case of promotions between one pay band to the next pay band, the revised band pay will, in no case, be less than the minimum of the higher
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pay band. All the running pay bands will have annual increments in form of two and half percent of the total of pay in the pay band and the corresponding grade pay. In some cases, this may result in a slight drop vis-à-vis the existing rate of increment along with dearness pay and dearness allowance thereon. This, however, is inevitable as a completely new scheme is being recommended where annual increments are payable on a percentage basis without any fixed, quantized stages. Further, the initial loss is more than made up in the higher stages as the actual amount of annual increment will not be static as at present but is going to increase every year. In the revised scheme, the date of annual increments, in all cases, will be the first of July. Employees completing six months and above in the scale as on July 1 will be eligible. This is being recommended to alleviate a large number of anomalies that arise due to the present system of annual increments where the increments are given on the basis of the month of joining a particular post and which frequently leads to a senior drawing lesser salary than his/her junior. ...”

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(Emphasis supplied)

11. 2.2.13 deals with Introduction of running pay bands. The provision reads as follows:

“2.2.13 Introduction of running pay bands will have the following benefits:-

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(i) Since all the pay bands have a long span, the problem of stagnation in a pay scale will be effectively addressed.

(ii) All matters concerning pay fixation at the time of promotion etc., which lead to numerous anomalies will be addressed automatically (since only grade pay will change along with one additional increment at the time of promotion without there being any refixation of salary in the higher grade except when the promotion is from one running scale to another). This will make FRs relating to fixation of pay on promotion (like FR 22), largely redundant.

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(iii) Most of the pay scale related anomalies that have been continuing and in fact evolving afresh would be resolved.

(iv) The model will make the Government organization less hierarchical. While, initially grade pay will be payable as per the

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- A hierarchy, however, Government will have the flexibility to remove layers by removing specific grade pay. In the long run the model can be suitably adjusted to remove even the element of grade pay thereby ensuring total delayering of the Government structure facilitating quick decisions and increased output.
- B (v) The model will facilitate the evolution of the concept of performance related incentives which can be paid as a distinct component as a supplement to the running pay bands.
- C (vi) Seniority of a post will depend on the grade pay drawn. This will invariably be more for a higher level post. Pay scales will largely become irrelevant for purposes of computing seniority. Thus, the present situation where frequently a junior draws higher salary (albeit in lower pay scale) vis-à-vis his senior because of longer years of service, will no longer be of any essence for purposes of computing seniority.
- D (vii) Running pay bands will ensure a common hierarchical pattern for the purpose of the modified ACP scheme.

E The present situation where a deputationist going on deputation to a post in a lower pay scale has to suffer salary loss (because salary can not be paid higher than the maximum of the pay scale attached to the post), will also be rectified in this model.”

(Emphasis supplied)

F 12. The submission of Shri V. Giri, learned Senior Counsel appearing for the respondent-officer is that the Sixth Pay Commission Report having been accepted *in toto* by the Government of India, the seniority should also be reworked based on the pay band as per the Report at 2.2.13(vi). In other words, according to the learned Senior Counsel, seniority on a post will solely depend on the grade pay, meaning thereby, no junior officer will draw a higher pay on rationalization of the grade pay and hence the justification for the consequential fixation of seniority based on the grade pay.

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H 13. There is a fundamental fallacy in this argument. There are umpteen number of situations where a senior officer in a service will be drawing a lesser pay than the junior. The instant case is a classic example. The respondent-officers who had been serving long elsewhere (since

1987 in the DANIPS), got a lateral induction into IPS based on their merit and seniority. While inducting them into IPS, they were given a year of allotment and placed below the direct recruits of that year. The officer who had been working in a different service gets pay protection while getting inducted to IPS and necessarily that officer will be drawing a higher pay than the direct recruit to IPS of the year concerned. His pay band and grade pay would also be different. The grade pay is to operate among the officers of the service prior to induction and not *qua* the officers belonging to a different service after the induction. In other words, the fixation of seniority based on grade pay is among the officers *inter se* of the same service and it has nothing to do with the grade pay in the starting scale of direct recruits in a different service, i.e. IPS in the instant case. To put it in clearer terms, merely because an officer in DANIPS working since 1987 is getting a higher pay and grade pay on account of his long service and that pay band being protected while induction to IPS, that by itself will not clothe him with a right to claim seniority above the entire direct recruits of several years who naturally would have been only on a lesser pay band having been in service only after direct recruitment. That is all what the Pay Commission meant. The situation would have been different had there been no pay protection at the time of induction. Merely because the pay has been protected that by itself cannot enure to an added advantage of seniority over the direct recruits who have already been in the IPS for quite a few years when the officers were inducted from the DANIPS. The whole scheme of grade pay is to operate only *qua* different posts within the same service.

14. The Pay Commission Report has nothing to do with the fixation of seniority in a service. That is governed by the rules of the service. Even otherwise, the Terms of Reference clearly indicate that the Commission was only called upon to examine the principles, the date of effect thereof that should govern the structure of pay, allowances and other facilities/benefits whether in cash or in kind etc. Unfortunately, this crucial distinction was not noticed by the High Court while answering the question that was formulated at paragraph-53, "*Can a junior officer draw higher pay, more particularly grade pay, than his senior?*". As illustrated above, there are umpteen such situations where a junior officer would draw higher pay, including the grade pay. There is no dispute that the seniority in IPS is to be fixed on the basis of the length of service in IPS. It cannot depend on the service rendered by an officer in

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A a different Service prior to induction to IPS. That will be cutting at the root of the fundamental principles on the fixation of seniority.

15. We also reiterate the well-settled position that the Court cannot direct for any legislation. (See the Constitution Bench decision of this Court in Manoj Narula v. Union of India¹)

B 16. The appeals are accordingly allowed. We clarify that the seniority in IPS will depend on the date of induction to IPS and it cannot be based on the length of service in any other Service prior to the induction. For that reason also, the direction issued by the High Court to amend the provisions of Indian Police Service (Appointment by Promotion) Regulations, 1955 and the Indian Police Service (Pay) Rules, 2007 is set
C aside.

17. There shall be no order as to costs.

Devika Gujral

Appeals allowed.

¹(2014) 9 SCC 1