

REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.3580 OF 2009**

Hukum Chand Gupta

...Appellant

VERSUS

Director General, ICAR & ORS.

...Respondent

J U D G M E N T**SURINDER SINGH NIJJAR,J.**

1. On 25th September, 2012, we passed the following order:

“Having heard the appellant-in-person and the counsel for the respondent, we find no merit in the appeal and the same is hereby dismissed. The detailed reasons with conclusions shall follow.”

2. Here are the reasons.
3. This appeal is directed against the judgment of the Division Bench of the High Court of Punjab and

Haryana at Chandigarh in Civil Writ Petition No.9595-CAT of 2004 decided on 8th August, 2008.

4. The appellant was initially appointed as a Laboratory Assistant in Group D on 29th December, 1961 in the National Dairy Research Institute (hereinafter referred to as 'NDRI'). On 13th January, 1966, he was promoted as a Lower Division Clerk (Junior Clerk) after qualifying limited departmental competitive examination. He was further promoted on 10th May, 1973 as a Senior Clerk, again after qualifying limited departmental competitive examination. At that stage, his pay scale was Rs.1200-2040/-. Subsequently, on 15th June, 1988, he was promoted to the post of Superintendent in the pay scale of Rs.1640-2900/- after passing the departmental examination. On 17th March, 1994, he was promoted as Assistant Administrative Officer on the basis of seniority-cum-fitness. The respondent revised the pay scale of Assistants on 17th June, 1995 from Rs.1400-2600 to Rs.1640-2900/-

w.e.f. 1st January, 1986. However, the pay scale of Superintendent was not revised.

5. At that stage, the appellant submitted a representation on 24th October, 1995 requesting that his pay scale may be revised on the ground that in Headquarters of Indian Council of Agricultural Research (ICAR), the post of Superintendent is a promotional post from that of Assistant which carries the pay scale of Rs.1640-2900/-. The representation not having been decided, the appellant filed OA No.567-HR-96 before the Chandigarh Bench of Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'). By order dated 20th May, 1997 the Tribunal disposed of OA with the following observations :-

“In this application, the agitation is for revision of pay scale of the applicant who is Superintendent in the scale of Rs.1640-2900/- to that of Rs.2000-3500/- on the ground that the duties and responsibilities of Superintendent are much higher than the Assistants working at Headquarters office of ICAR and he should be given the higher pay scale. As per the recent judgment of the Hon'ble Supreme Court in the case of UOI and Anr. vs.

P.V.Hariharan and Anr. O.A.No.7127 of 1993 arising out of OA 391/91, has precluded the Tribunals from adjudicating the matters of parity of pay or pay scales in the Government Department unless some discrimination is brought to the notice of the Court. This is a matter regarding parity of pay scales between two sets of posts, therefore, it is squarely covered by the directions of Hon'ble Supreme Court. In view thereof, this matter cannot be adjudicated by this Tribunal.

2. However, it was also brought to our notice that the matter is engaging the attention of the authority concerned and the representation filed by the applicant on 24.10.1995 (A-3) is under active consideration.

3. In view thereof, the OA is disposed of with a direction that respondents shall expedite the decision in the matter. OA disposed of accordingly.”

A perusal of the aforesaid shows that the Tribunal declined to entertain the claim of the appellant by relying upon the judgment rendered by this Court in **Union of India** Vs. **P.V.Hariharan & Anr.**¹ The Tribunal, however, directed that the respondent shall expedite the decision on the representation submitted by the appellant.

¹ (1997) 3 SCC 568

Subsequently, NDRI sent a copy of the memorandum to the appellant on 2nd April, 1998 which reads as under:

MEMORANDUM

“With reference to the Court Case filed by Sh.Hukum Chand Gupta Asstt. Administrative Officer, NDRI, Karnal, under OA No.567/HR/96 in the Central Administrative Tribunal, Chandigarh, regarding upgradation of the post of Superintendent in the higher scale of that the proposals based upon the recommendations of Dr. Raman Committee involving upgradation of posts including the Superintendent/Superintendent (A &A) and Sr. Stenographer in the existing pay scale of RS.1640-2900 (revised to Rs.5500-175-9000) to the next higher grades, the same have not yet been concurred to by the Ministry of Finance. Deptt. of Expenditure. Thus the decision in the matter is pending.

This issue with reference to the ICAR letter No.9-16/96 Law dated the 11-March-1998.

Sd/-

(J.K.Kewalramani)

Senior Administrative Officer Admn.)”

6. On 4th August, 2000, the appellant was further informed that ICAR, on the basis of the recommendation of the Cadre Review Committee, had

directed for upgradation of seven posts of Superintendents to the post of AAO, by letter dated 17th December, 1998. Therefore, no further decision was required to be taken by the respondent on the representation of the appellant.

7. It appears that on 12th December, 2000, the Screening Committee of respondent institute recommended the case of Shri J.I.P. Madan for financial upgradation in the scale of Rs.8000-13500/-. The aforesaid decision was taken on the basis of the instructions of the ICAR by which the post of Superintendent was merged with the post of Assistant as the post of Superintendent was treated as 'dying cadre'. In the meantime, the appellant reached the age of superannuation on 31st July, 2001 and duly retired from service. On 17th April, 2002, Shri J.I.P. Madan was granted second financial upgradation w.e.f. 8th February, 2001 in the pay scale of Rs.8000-13500. At this stage, the appellant again moved the Tribunal through OA No.299/HR/2003. The appellant claimed that Shri J.I.P. Madan being

junior to him cannot be put in a higher pay scale. The OA was dismissed on 2nd December, 2003.

8. By a detailed order, the Tribunal rejected both the claims. It was observed that the post at Headquarters cannot be compared with the post at Institutional level as both are governed by different sets of Service Rules. The second prayer with regard to the higher pay scale given to Shri J.I.P. Madan was rejected on the ground that he had been given the benefit of second upgradation in pay since he had earned only one promotion throughout his professional career.

9. Aggrieved by the aforesaid, the appellant filed a writ petition C.W.P. No. 9595 CAT of 2004 before the High Court. The writ petition has also been dismissed by judgment dated 8th August, 2008. This judgment is impugned in the present appeal.

10. We have heard the appellant, in person, and Mrs. Sunita Rao, on behalf of the respondents.

11. We see no reason to differ with the conclusion reached by the High Court. It is a matter of record that the claim of the appellant had been negated way back in 1997, when the Tribunal rejected the claim. The aforesaid order of the Tribunal was not challenged by the appellant. However, leaving aside the question of laches, we are of the opinion that the appellant has failed to establish that the action of the respondents is either discriminatory or beyond the purview of the rules.

JUDGMENT

12. According to the appellant, the decisions rendered by the Tribunal as well as the High Court are based on a misconception. According to him, there can be no distinction in the pay scales of the posts in Headquarters on one hand and at institutional level on the other. He claims that the persons holding identical

posts performing identical and similar duties under the same employer cannot be treated differently in the matter of pay and allowances, depending on whether the employees are posted at Headquarters or at the Institution level. This, according to the appellant, violates Article 14, 16 and 39D of the Constitution of India.

13. Mrs. Sunita Rao, learned counsel appearing for the respondent has submitted that Shri J.I.P. Madan was appointed as a Lab Assistant w.e.f. 3rd May, 1976 at NDRI. He was directly recruited thereafter on 9th February, 1977 as an Assistant in the pay scale of Rs.425-700. This was not a case of promotion from the post of Lab Assistant, a technical post to the post of Assistant which is in the general cadre. She, however, accepts that Shri Madan was further promoted as Superintendent on 24th August, 1990 in the pay scale of Rs.1640-2900 revised to Rs.5500-9000 with effect from 1st January, 1996. He was

further promoted to the post of AAO on 1st November, 1996 in the pay scale of Rs.6500-10500. She, however, points out that there was a merger of the post of Superintendent and Assistant in 1998. Therefore, the post of Superintendent was declared a dying cadre. Assured Career Progression Scheme (hereinafter referred to as 'ACP Scheme') was introduced in 1999. Some institutes had raised a point of doubt as to whether the promotion of Assistant to Superintendent may be ignored in terms of DOPT's clarification vide O.M. dated 10th February, 2000. Reference was, therefore, made to the DOPT for the necessary clarification. The clarification given by the DOPT was communicated to the respondent institute by letter dated 1st March, 2002. Learned counsel brought to our notice the relevant extract of the aforesaid letter, which is as under : -

"In the given facts, the post of Assistant and Superintendent have been brought at par as incumbents of both are eligible for promotion directly to the grade of AAO and Assistant is no longer the feeder grades for

Superintendent. Since, financial upgradation under AGP schemes are to be allowed as per the hierarchy available as on 9.8.1999, the promotion earned to the grade of Superintendent prior to 9.8.99 may have to be ignored in terms of clarification to point of doubt No.1 in O.M. dated 10.2.2002.”

14. According to the learned counsel, the promotion of Shri Madan from the post of Assistant to the post of Superintendent had to be ignored on the basis of the above clarification. Consequently, he had been given the second upgradation under the ACP on 26th March, 2000.

15. In our opinion, the explanation given by Mrs. Sunita Rao does not leave any room for doubt that the claim made by the appellant is wholly misconceived. There is no comparison between the appellant and Shri J.I.P. Madan. The appellant had duly earned promotion in his cadre from the lowest rank to the higher rank. Having joined in Group D, he retired on the post of AAO. On the other hand, Shri J.I.P. Madan had been working in the same pay scale till his promotion on the

post of AAO. Therefore, he was held entitled to the second upgradation after 24 years of service. He had joined as an Assistant by Direct Recruitment and promoted on 24th August 1990 as a Superintendent. After the merger of the post of Assistant with the Superintendent, the earlier promotion of Shri Madan was nullified, as Assistant was no longer a feeder post for the promotion on the post of Superintendent. Thus, a financial upgradation, in view of ACP Scheme, was granted to him since he had no opportunity for the second promotion.

16. The Assured Career Progression Scheme for the civilian employees was introduced on the recommendations of the Vth Central Pay Commission. It was introduced with a view to provide a 'Safety Net' to deal with problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Under this scheme, it was decided to grant two financial upgradations on

completion of 12 years and 24 years of regular service respectively. It was further provided that isolated posts in Group A, B, C and D categories which have no promotional avenues shall also qualify for similar benefits. Grant of financial upgradations under the ACP Scheme was, however, made subject to the conditions mentioned in Annexure-I of the Office Memorandum No.35034/1/97-Estt(D) dated 9th August, 1999. The conditions in Annexure-I indicate that ACP Scheme envisages only a placement in the higher pay-scale/grant of financial benefits (through financial upgradation). This is given to the Government servant concerned, on personal basis only. It neither amounts to functional/regular promotion nor requires creation of new posts for the purpose. The aforesaid clarification makes it abundantly clear that the financial upgradation was granted to Shri Madan strictly inconformity with the aforesaid scheme. Therefore, the objections raised by

the appellant were without any basis and wholly misconceived.

17. We may notice here that the provisions contained in ACP Scheme are inconsonance with the observations made by this Court in **Council of Scientific and Industrial Research & Anr. Vs. K.G.S. Bhatt & Anr.**²

in the following words:

“It is often said and indeed, adroitly, an organisation public or private does not “hire a hand” but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See *Principles of Personnel Management*, Flipo Edwin B., 4th Edn., p. 246) Every management must provide realistic opportunities for promising employees to move upward. “The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of

² (1989) 4 SCC 635

personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors.” (See *Personnel Management*, Dr. Udai Pareek, p. 277) There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions. (See *Management of Personnel in Indian Enterprises*, Prof. N.N. Chatterjee, Ch. 12, p. 128)”

18. In the case of **State of Tripura & Ors. Vs. K.K. Roy**,³

this Court again observed that “it is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues.”

³ (2004) 9 SCC 65

19. As noticed earlier, the ACP Scheme was introduced in the ICAR by making the necessary provision in the statutory Service Rules. Admittedly, Shri J.I.P. Madan has been given the benefit under the ACP Scheme. Therefore, the decision taken by the respondent was within the purview of the Service Rules and can not be said to be arbitrary. That being so, the claim made by the appellant is clearly misconceived.

20. We are also not inclined to accept the submission of the appellant that there can be no distinction in the pay scales between the employees working at Headquarters and the employees working at the institutional level. It is a matter of record that the employees working at Headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of promotion are different. Also, merely because any two posts at the Headquarters and the institutional level have the same nomenclature, would not necessarily require that the

pay scales on the two posts should also be the same. In our opinion, the prescription of two different pay scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39D of the Constitution of India. It is for the employer to categorize the posts and to prescribe the duties of each post. There can not be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a Writ Court would normally venture to

substitute its own opinion for the opinions rendered by the experts. The Tribunal or the Writ Court would lack the necessary expertise undertake the complex exercise of equation of posts or the pay scales.

20-A. In expressing the aforesaid opinion, we are fortified by the observations made by this Court in **State of Punjab Vs. Surjit Singh**.⁴ In this case, upon review of a large number of judicial precedents relating to the principle of 'equal pay for equal work', this Court observed as follows:

"19...Undoubtedly, the doctrine of 'equal pay for equal work' is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of 'equal pay for equal work' has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes

⁴ (2009) 9 SCC 514

of pay in order to promote efficiency in administration. A *higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation.....*A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of 'equal pay for equal work' requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof."

(Emphasis supplied)

21. In our opinion, the aforesaid observations would be a complete answer to all the submissions made by the appellant.

22. For the aforesaid reasons, we see no merit in this appeal and the same is dismissed.

.....J.
[Surinder Singh Nijjar]

.....J.
[H.L.Gokhale]

**New Delhi;
September 25, 2012.**

JUDGMENT