* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 22.02.2024

% ***Judgment Pronounced on: 22.03.2024***

\+ **W.P.(C) 10871/2009**

MAN SINGH & ORS. **..... Petitioners**

Through: Mr. Shanker Raju and Mr. Nilansh Gaur, Advocates

Versus

UNION OF INDIA & ORS. **..... Respondents**

Through: Mr. Ripu Daman Bhardwaj, CGSC with Mr. Kushagra Kumar, Mr. K. Manaswini and Mr. Abhinav Bhardwaj, Advocate

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. On 19.09.1989, since the Ministry of Home Affairs[1] implemented combatisation policy in Central Para Military Forces[2], certain civilian posts of the Indo Tibetan Border Police[3] were given option of conversion to combatisation post in the ITBP. In fact, the post of Accounts Officers @ pay scale Rs.2375-3500/- was made equivalent to Subedar Major (Accounts Officers) @ pay scale Rs.2000-3200/-.

[1] Hereinafter referred to as ***"MHA"***
[2] Hereinafter referred to as "***CPMF"***
[3] Hereinafter referred to as "***ITBP"***

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2. As things existed then, a personnel holding the post of Subedar Major (*Group B Non-Gazetted*) could not be assigned the duties of Drawing and Disbursing Officer with authority for signing the bills for drawl of payment from the Pay and Accounts Office of ITBP in terms of provision contained in the *Rule 35(2)* of the Receipt and Payment Rules Civilian Accounts Officers. However, vide order dated 07.02.2000, the MHA converted the post of Subedar Major (Accounts Officer) (*Group B Non-Gazetted*) to Joint Assistant Commandant (Accounts Officer) (*Group B Gazetted*)[4] with pay scale of Rs. 6500-10500/-.

3. Since the petitioners opted for Subedar Major (Accounts Officers) and were working as Accounts Officers then, as per petitioners, since the conversion of the said posts to JAC (AO) which tantamounted to upgradation with higher duties/ responsibilities, on 19.05.2006, they made a representation to the ITBP for correction of anomaly regarding their pay scale. In response thereto, the ITBP, apprised them that the matter would be taken up with the 6th Pay Commission. Later, on 10.02.2009, the feeder cadre post of Inspector (Accountants) (*Group B Non-Gazetted*)[5] and the post of JAC (AO) alongwith the lower post in hierarchy of Subedar Major (*Group B Non-Gazetted*) were all placed in the same pay scale of Rs.9300/- - 34800/- in PB-2 with Grade Pay at Rs.4600/- per month.

4. Aggrieved therewith, the petitioners preferred the present writ petition under Article 226 of The Constitution of India seeking placement in a higher pay scale than the post of Subedar Major (Accounts Officer),

[4] Hereinafter referred to as "***JAC (AO)"***
[5] Hereinafter referred to as "***I(A)***'

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in the pay scale of Rs. 9300/- - 34800/- with graded pay at Rs. 5400/- per month in PB-2 w.e.f. 01.01.2006 alongwith all the consequential benefits.

5. Learned counsel for the petitioners, placing reliance upon ***Union of India & Ors. vs Dineshan K.K.***[6]; ***Union of India & Ors. vs C.R. Madhava Murthy & Anr.***[7], primarily submitted that as the post of JAC (AO) is a promotional post to that of the feeder cadre post of I(A) and is having higher duties/ responsibilities, the post of JAC (AO) and I(A) being in the same pay scale is unconstitutional.

6. *Per-Contra*, learned counsel for the respondents submitted that MHA had sent a proposal regarding the discrimination in pay scale to the Ministry of Finance[8]-respondent no.2 way back in 2006, but the same was rejected. He submitted that the aforesaid is not open to challenge, particularly when the basis of the findings and recommendations of the Pay Commission thereof have not been challenged by the petitioners herein. He also submitted that in view of all the liabilities incumbent upon the petitioners, including the reduction of the pay scale from Rs. 2375-3500/- to Rs. 2000-3200/-, since the petitioners themselves opted for combatisation of their posts by signing a declaration in view of the letter dated 19.09.1989 qua combatisation policy in the CPMF, the petitioners are not entitled to the present reliefs as sought.

7. Learned counsel, then, submitted that since there is no such post outside Delhi and petitioners have the opportunity and luxury of staying back in Delhi during the tenure of their entire service career, thus the posts

[6] (2008) 1 SCC 586
[7] (2022) 6 SCC 183
[8] Hereinafter referred to as "***MoF***"

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of those belonging to the Combatant Ministerial Cadre and those of JAC (AO) cannot be compared with each other.

8. Based upon what has been canvassed by both learned counsel for the parties and a perusal of all the documents on records, we are, in this petition called upon to adjudicate, whether the petitioners being JAC (AO) are in fact performing higher jobs/ duties than their lower feeder cadre post of I(A) as also whether they are actually entitled to a higher pay scale than the post of Subedar Major (Accounts Officer)/ I(A) in the pay scale of Rs.9300-34800/- with grade pay at Rs.5400/- in PB-2 w.e.f. 01.01.2006 alongwith all the consequential benefits. In effect, the issue for adjudication before us is simply, whether the pay scale of the petitioners herein was requiring a step up, particularly, as they being in the post of JAC (AO) are placed with their own feeder cadre post of I(A).

9. That those in the promotional post of JAC (AO) like the petitioners are separate as they are discharging duties and performing functions which are different from those of its feeder post of I(A), which is evident from the rules framed by the MHA regularising the method of selection of both JAC (AO) and I(A) notified in the form of Recruitment Rules as set out in Notification GSR 833 (E) dated 24.10.2000.

10. Furthermore, that the promotional post of JAC (AO) is separate/ different from of its feeder post of I(A), which is apparent from the fact that the post of JAC (AO) is a gazetted combatant ministerial post as per the Schedule of the Notification No.543 dated 24.10.2000 published in the Gazette of India, which is reproduced as under:-

Name of Post	Number of posts	Classification	Scale of pay	Whether by selection-cum-seniority or selection by merit or non-selection post.	Whether benefit of added years of service admissible under rule 30 of the Central civil Services (Pension) Rules, 1972	Age limit for direct recruits
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Joint Assistant Commandant (Accounts Officer)	3*(2000)	General Central Service Group 'B' (Gazetted) (Combatant Ministerial)	Rs. 6500-200-10500/-	Selection-cum-seniority	Not applicable.	Not applicable.
Subject to variation dependent on workload						

11. For the aforesaid reasons and even otherwise, as also based on the table herein below, *prima facie*, we have no qualms in holding that the work assigned and the duties performed by the petitioners on the said promotional post of JAC (AO) are entirely different/ separate from that of its feeder post of I(A). For better understanding, the said table exhibiting such assigned works to be performed by the petitioners on the post of JAC (AO) are as under:-

DUTIES OF JT. ASSISTANT COMDT. (Accounts Officers)/ DDO	***DUTIES OF INSPECTOR (ACCOUNTANT)***
Supervision of working of Accounts branch Regulation of Govt. Finance	*The detailed supervision of he working of staff posted under him in Accounts/ Pay bill Sections at Dte. Gen and CRO, ITBP*

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Being DDO is responsible for Drawl of Govt. Money and Disbursement therefore.	*Checking of Salary, TA LTC, Medical Reimbursement Claims, Contingency and all type of advances bills before submission to DDO for signature.*
Maintenance of Accounts	*Checking of entries made in PBRs by Pay bill Clerks as well as checking of LPCs issued to other Departments and pension section.*
Signing of all bills present to PAO for drawl of payment	
Control of Expenditure, Preparation of Budge Estimates/ Revised Estimates.	*Initiation of ACRs of staff posted in the Accounts/ Pay bill sections under his supervision at Dte Gen. And CRO, ITBP*
Initiation of ACRs of Inspector/ Accountants	

12. That the petitioners who are holding the post of JAC (AO) in the ITBP Directorate General and Central Record Office as group 'B' Gazette Officers are differently placed/ situated is also apparent from *Rule 35(2)* of the Receipt & Payment Rules, 1983, which provides as under:-

> *"(2) The Head of an Office may authorise any Gazetted Officer serving under him to sign a bill or order for him, communicating the name and specimen signature of the officer to the disbursing officer concerned. This will not, however, relieve the Head of the Office in any way of his responsibility for the accuracy of the bill or for the disposal of the money received in payment. When the above arrangements are made due to his temporary absence from headquarters on account of leave or tour, he should immediately, on return, check that the bills passed and cheques issued by the nominated officer during the period of his absence are correct, the payments have been properly accounted for and record a certificate to this effect in the cash book. Similar action may also be taken in case the arrangements are made due to his transfer but in that case, the prescribed verification may be made by the successor officer, soon after he takes over the new charge."*

13. Moreover, since there are only *four* sanctioned/ authorised posts of such JAC (AO) in the whole combatised stream, we can safely infer that the petitioners such as JAC(AO) are, in fact, not only differently placed/ situated but actually hold a specialised post created/ carved out for a specific purpose. Under these circumstances, merely because the said posts of JAC (AO) were only sanctioned for performing the duties at the Director General and the CRO, ITBP, Delhi they cannot be compared with posts holding other Combatant Ministerial Cadre. Even otherwise, we are not to carry out a threadbare analysis of the exact nature of functions, duties and performance of those on the post of JAC (AO) and those on the post of I(A), particularly whence, we have not been called upon to do so.

14. It is for these aforesaid reasons that in our considered opinion, the petitioners being JAC (AO) are different and separate from the rest. Another relevant factor to hold so is that except ITBP, the said post of JAC (AO) is neither sanctioned nor authorised in combatised stream to any other CPMF including that of the post of I(A).

15. Thus, holistically the nature of work assigned and the performance of duties by the petitioners in the promotional post of JAC (AO) with its feeder cadre post of I(A) coupled with the responsibilities given as also the authority exercised by them are separate and different from each other. As such, considering the aforesaid scenario, the concerned/ promotional post of JAC(AO) and that of its feeder cadre post of I(A) cannot, in any way, in our considered opinion, be *pari materia* with each other. Moreover, equating them as such would be against the mandate and spirit of Article 14 of The Constitution of India.

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16. Resultantly, for the afore-going reasons, it would not be wrong for us to conclude that the petitioners were indeed upgraded to the promotional post of JAC (AO), which is in all respects different from its feeder post of I(A). Thus, in our considered opinion, with such an upgradation of the kind in the case of the petitioners, there can be no debate that with such 'upgradation' to a new post of JAC (AO) comes with new, more added responsibilities, duties, charges and authority. In fact, such an upgradation of the petitioners was neither a matter of right nor a matter of choice and was in fact bestowed upon them by the ITBP and the MHA. Also, the petitioners were placed in the newly created post of JAC (AO) for the first time. *Admittedly*, the said post of JAC(AO) was neither eligibility based nor was a promotional post for which holding a Departmental Promotional Committee was required.

17. Therefore, for the aforesaid reasons and under the said prevailing position, the petitioners herein indeed had a legitimate expectation for drawing a higher pay scale, which was certainly more than that of its feeder cadre post of I(A). In our view, the petitioners herein as such have expressed a genuine grievance by way of the present petition.

18. Collectively, taking the position involved and under the facts and circumstances in the present case, it is imperative for the respondents to give substantive weightage and sanctity to the fact that it is they, who for their own benefit, betterment, have created/ carved out a special post of JAC(AO). Having done so, the respondents cannot include the promotional post of JAC(AO) and its feeder cadre post of I(A) at the same pay scale.

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19. In our considered opinion, by doing so, the respondents will be going against their own decision, which is once again in clear violation of the mandate of the Article 14 as also Article 21 of The Constitution of India. It is for this reason that the petitioners as JAC(AO) ought not to be put in the same pay scale as that of its feeder cadre of I(A). Even though Article 14 of The Constitution of India does not prohibit reasonable classification, however, the test for permissible classification has to be passed, the differentia which distinguishes persons or things that are grouped together from others left out the group must have a rational relation. Merely because the petitioners on the post of JAC (AO) are based out of Delhi for the entirety of their careers is no ground for not being compared with other I(A), especially, whence there is no other basis or plausible reason for the respondents placing its feeder cadre post of I(A) similarly and giving them the same pay scale as the petitioners on the post of JAC(AO). The same is very much against the settled principles of law as well as against the spirit of Article 14 of The Constitution of India.

20. Having once held hereinabove that the petitioners who are on the promotional post of JAC (AO) are performing different functions and discharging separate duties as also, admittedly, being on a higher post, they are indeed placed on a higher pedestrian. As such, there is no impediment for us in holding that the petitioners herein are thus, well and truly, entitled to a higher pay scale than what they are presently drawing from that of their feeder cadre post of I(A).

21. In view thereof, giving the same pay scale to the petitioners, who are in the promotional post of JAC (AO), as that of their feeder cadre post of I(A) would thus, particularly in view of all the aforesaid prevalent,

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existing situation create an anomaly. Therefore, in our considered opinion the pay scale of the petitioners who are discharging their duties as JAC (AO), should be more than what is drawn by the feeder post of I(A) and certainly not equal to them so as to commensurate with the work done and duties discharged by them.

22. Ironically, rather strangely, despite the aforesaid being the position and despite the fact that the petitioners herein were/ are, *admittedly*, holding the post of JAC (AO) and are already on a higher post than those on the post of I(A), which admittedly is their feeder cadre post and as those on the said post of I(A) work under the direct supervision and control of the JAC (AO) like the petitioners herein as also the Drawing and Distribution Officer's in Directorate General and Central Record Office, ITBP, the petitioners are drawing the same pay scale. Once again, there seems to be no reason plausible for the promotional post of JAC (AO) and its feeder post of I(A) to draw the same pay scale.

23. Now coming to the scope of judicial review and the exercise thereof by us in the present petition under Article 226 of The Constitution of India in a situation like the present one herein. It is to be noted that though the scope of judicial review under Article 226 of The Constitution of India, and that too regarding general fixation of pay falls under the purview of the executive like the respondents herein, is very negligible and is not to be gone into by us, however, in a case like the present one where we find the situation is otherwise, particularly, as the actions of the respondents in giving the same pay scale to the petitioners who are in the promotional post of JAC (AO) and their feeder cadre post of I(A) is against the basic tenets of law and shocks our conscience, we can exercise our power of

judicial review under the inherent jurisdiction under Article 226 of The Constitution of India. More so, when in our opinion, the said actions of the respondents are violative of the fundamental rights of the petitioners as enshrined in The Constitution of India.

24. Succinctly put, as the issues raised before us are of immense legal and constitutional value with great significance and having an overall bearing in the system, we, being a Court of law, cannot sit tight without going into and adjudicating the merits thereof. It is thus we deem it fit, proper and appropriate to proceed for adjudicating the present petition, moreover, under the existing circumstances involved, in our considered opinion it is rather our constitutional obligation to do so.

25. Reliance in this regard is placed upon ***Union of India & Ors. vs D.G.O.F Employees Association & Anr.***[9] wherein the Hon'ble Supreme Court has held as under:-

> *"10. A cumulative perusal of the opinion expressed by this Court would indicate that though the Courts would not undertake the exercise of determining the pay scale keeping in view the nature of the work by comparing employees who are not similarly placed in cases where the exercise of determining such complex issues would arise, at the same time, relief cannot be denied to the employees when the entitlement is denied due to irrational consideration without application of mind to the facts involved in the case by the employer, thereby denying the benefits to the employees. If this aspect of the matter is kept in view, a perusal of the consideration made by the High Court as seen from the portion reproduced above from the judgment of the High Court, it would disclose that the High Court has not undertaken the exercise regarding which restraint has been expressed by this Court. However, on the admitted facts and the earlier situation which existed, a consideration has been made keeping in view the very recommendation of the Pay Commission in reckoning the appropriate application of the pay scale. In that regard, all that has been adverted to by*

[9] 2023 INSC 995

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the High Court is as to whether the employees who are the members of the respondent and are employed in the headquarters are similarly placed as that of the employees of CSS/CSSS and in that regard has considered the matter further to ensure that the members of the respondent are not discriminated upon."

26. Further, though we are well aware that it is the expert bodies like the legislature and/ or the executive who are the competent authority to make policies and regulate decisions taken qua them when it comes to matters regarding pay fixation and there is minimal scope of interference, however, when there is an anomalous situation like the present one which creates a doubt and raises a suspicion in the minds of a Court, which is a clear violation of the "*Right to Equality*" enshrined in Article 14 of The Constitution of India, then a Court of law (in the present case us) is left with no other alternative but to rectify the said (ongoing) wrong so that it does not perpetrate any more. In our opinion, this is such a case wherein the existing anomalous situation, if allowed to exist, will be violative of Article 14 of The Constitution of India as for all practical purposes it seeks to merge the pay scale of two posts, even though the nature of duties and works performed by them are different and moreover when one of the said post is actually the feeder post for the other promotional post.

27. This we say so, despite being well aware that the MoF had already rejected a proposal regarding discrimination in the pay scale sent by the MHA. This loses significance, as the 6th Pay Commission, in response to the recommendation qua a higher pay scale by the MHA, in its letter dated 25.04.2011 did not agree to the proposal of discrimination in the pay scale of JAC (AO), ITBP without any plausible reasons by simply noting as under:-

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> *"(iii) <u>Proposal</u>: Discrimination in the pay scale of Joint Assistant Commandant (Accounts Officer) in ITBP"*
>
> ***<u>Decision of MoF:-</u>*** *Grant of the GP of Rs. 4800/- and grant of GP of Rs. 5400/- in PB-2 after 4 years of service to the post of Joint Assistant Commandant (Accounts Officer) is not agreed to."*

28. Since we find that there was a glaring mistake in the nature of an existing fault on the part of the respondents, which on the face of it required interference then and which, as such now calls for judicial interference, and rectification by us. This being an exceptional circumstance, we have no option but to exercise our jurisdiction of judicial review.

29. *De-hors* the aforesaid, we make it clear that we are only exercising our jurisdiction of judicial review and neither sitting over appeal on the decisions taken by the respondents nor differing with the opinion rendered on by them. We are only going by and limiting ourselves to the decision taking/ making process of the respondents so that we can come out of the existing anomalous situation which is well and truly against the principles of natural justice and good conscience as also in contravention of Article 14 of The Constitution of India.

30. This is more so because even though the present petition was pending its outcome since long, it is unclear as to why and in fact, what were the reasons and basis which prompted the MoF to reject the proposal regarding discrimination in the pay scale, which though was not required as a matter of course, however, considering the situation involved herein the same was of extreme relevance and importance.

31. So, therefore, we have replied to all the issues raised before us, i.e. that the petitioners herein being JAC (AO), are in fact performing higher

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jobs/ duties than their lower feeder cadre post of I(A) and thus, for the afore-stated elaborate discussions and reasonings are actually well and truly entitled to a higher pay scale than the post of Subedar Major (Accounts Officer)/ I(A) in the next pay scale of Rs.9300-34800/- with graded pay at Rs.5400/- per month in PB-2 w.e.f. 01.01.2006 alongwith all the consequential benefits.

32. For the aforesaid reasons, we allow the present petition and dispose of the same with the directions to the respondents to give appropriate placement to each of the petitioners herein in the next higher pay scale now alongwith all consequential benefits within a period of six weeks from today. It is made clear that in case of any default, the respondents will also be liable to pay the aforesaid amount alongwith simple interest @ 6% per annum.

33. Accordingly, the present petition is disposed of in above terms.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

MARCH 22, 2024/rr

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