

(2014) 01 P&H CK 0211
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14323 of 2001

B.B. Gautam

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Pharmacy Act, 1948 — Section 32

Citation : (2014) 01 P&H CK 0211

Hon'ble Judges : Sanjay Kishan Kaul, C.J; Augustine George Masih, J

Bench : Division Bench

Advocate : K.V. Sharma and Mr. D.R. Sharma, for the Appellant; Rupinder Khosla, Assistant Solicitor General of India for Respondent No. 1, Mr. R.L. Gupta, Advocate, Mr. R.K. Sharma, Advocate for Respondent Nos. 2 and 3 and None, for the Respondent

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—In this writ petition, challenge has been posed to the order dated 9.2.2001 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short, "the Tribunal"), dismissing O.A. No. 839/HR/1993, in which the petitioner had prayed for changing the designation of the post of Compounder-cum-Clerk to Pharmacist and by treating it as technical allowing benefit of promotion in the said cadre. Petitioner was appointed as a Compounder-cum-Clerk on 13.11.1961, on which post he joined with the Director, National Dairy Research Institute, Karnal. He possesses the qualifications of a trained Compounder and Dresser and is registered Pharmacist u/s 32 of the Pharmacy Act, 1948 (for short, "1948 Act"). From the date of his appointment, he is discharging the duties as a Pharmacist, including the work of Store Clerk.

2. With effect from 1.10.1975, two services have been created in the Indian Council of Agricultural Research (ICAR) by designating all Compounders as

Pharmacists and accordingly it is claimed that the Compounder-cum-Clerk (the post held by the petitioner) should also be designated as a Pharmacist and declared as a technical service. Post of Storekeeper-cum-Clerk was re-designated as a Pharmacist qua those having diploma/degree and registration as Pharmacist under 1948 Act vide letter dated 9.6.1988 and, therefore, the classification of the post of Compounder-cum-Clerk as an auxiliary category instead of a technical category is not sustainable.

3. Petitioner had been making representations to the respondents, claiming the said benefit and in response to one of such representations, the respondents intimated the petitioner vide letter dated 24.1.1992 that the matter of re-designation of the post of Compounder-cum-Clerk to Pharmacist is under consideration. Petitioner thereafter submitted few representations but when no response was received and he was to retire on 30.10.1993, he preferred O.A. No. 262/HR/1993 before the Tribunal, which was disposed of vide order dated 19.4.1993, directing the respondents to decide the representation of the petitioner within two months. In compliance thereto, order dated 29.6.1993 was passed, vide which the representation of the petitioner was rejected. However, it was mentioned in the said order that the issue regarding re-classification of various auxiliary posts was pending before the Board of Arbitration.

4. Petitioner, thus, filed another O.A. No. 839/HR/1993, which stands rejected by the Tribunal vide order dated 9.2.2001 on the ground that O.A. preferred by the petitioner is hopelessly barred by limitation/jurisdiction as provided for u/s 21 of the Administrative Tribunal Act, 1985 as also on merits as the classification done is based on intelligible differentia distinguishing technical and auxiliary categories as projected in the written statement filed by the respondents. It is this order, which is challenged in the present writ petition by the petitioner.

5. Counsel for the petitioner contends that the Tribunal has wrongly dismissed the O.A. of the petitioner being time barred, especially when the respondents have accepted as a matter of fact that the matter was under consideration and thereafter the Tribunal had itself passed an order directing the disposal of the representation within a specified time. The rejection order of the claim of the petitioner has been thereafter challenged through the second O.A., which could not have been rejected on the ground of limitation as the same would not apply.

6. On merits, it is asserted by the counsel that the respondents vide letter dated 20.8.1996, Annexure P-4, have stated that the post of Pharmacist stands re-designated as Stockman-cum-Compounder and re-classified as technical and, therefore, the petitioner was also entitled to the re-classification of the Post of Compounder-cum-Clerk as a Pharmacist and thereafter Stockman-cum-Compounder and consequently, a technical post. In any case, vide this letter, the post of Compounder-cum-Clerk stands re-designated as a Pharmacist and, thus, the petitioner is entitled to the benefit. He admits that the petitioner has retired on 31.10.1993 and the order is subsequent thereto which has been ordered to be applicable with effect from 29.6.1996 i.e. the date of approval by the President of

ICAR but he asserts that the petitioner would be entitled to the retiral benefits. He accordingly prays for the grant of said benefit.

7. On the other hand, counsel for the respondents submits that the order passed by the Tribunal is in accordance with law. He contends that the claim of the petitioner was barred u/s 21 of the Act and, therefore, has rightly been dismissed. On merits, he asserts that the petitioner is not entitled to the benefit of the decision dated 20.8.1996 as the petitioner retired on 31.10.1993 and the said order would not be applicable to the case of the petitioner. Prayer has, thus, been made for dismissal of the writ petition.

8. We have considered the submissions made by counsel for the parties and have gone through the records of the case.

9. As regards the rejection of the O.A. of the petitioner by the Tribunal on the ground that the same was barred under law of limitation and jurisdiction is concerned, the said view is unsustainable in the light of the fact that the claim of the petitioner was intimated to him in response to his representation vide communication dated 24.1.1992 by the respondents to the effect that the matter of re-designation of the post held by the petitioner to that of a Pharmacist is under consideration of the respondents, which led to filing of O.A. No. 262/HR/1993 before the Tribunal, which was disposed of vide order dated 19.4.1993, directing the respondents to decide the representation of the petitioner within two months. It is in pursuance thereto that the order was passed by the respondents, rejecting the claim of the petitioner vide impugned order dated 29.6.1993, which was challenged by the petitioner through second O.A. No. 839/HR/1993. The cause of action accrued to the petitioner on rejection of his claim vide order dated 29.6.1993 and challenge to the same, thus, cannot be said to be beyond the limitation as prescribed for entertaining the application u/s 21 of the Administrative Tribunal Act, 1985. The findings on this count by the Tribunal vide order dated 9.2.2001 cannot, thus, sustain and are hereby set-aside.

10. Creation/abolition/merger/re-designation and grant of pay scales and formation of cadres is the prerogative of the executives, which is based upon the policy decision and, therefore, the Court should not generally interfere in such matters. It is admitted position before us that during the service period of the petitioner i.e. till 31.10.1993, no decision was taken by the governing body of ICAR regarding classifying the post of Compounder-cum-Clerk as a Pharmacist or declaring it to be a technical post. The order dated 20.8.1996, on which reliance has been placed by counsel for the petitioner for claiming the benefit of being a technical post, as held by the petitioner and the consequential benefits, cannot be made applicable to the petitioner, who has retired on 31.10.1993 as the said order specifically states that it would be applicable from 26.9.1996 i.e. the date of approval by the President, ICAR. This order has not been challenged by the petitioner despite it having been passed during the pendency of the proceedings before the Tribunal nor has this order been challenged before this Court through the present writ petition. The order, thus, has to be taken as it is, which would

not entitle the petitioner to claim the benefit, as has been made by him. Merely because the petitioner possesses the qualifications of the post of Pharmacist would not entitle him for re-designating the post of Compounder-cum-Clerk held by the petitioner to be that of a Pharmacist nor can the scale of the said post of Pharmacist granted to him, unless some decision/order/instructions/rules provide for such benefit. No such information is available on record in this regard. In view of the above discussion, the claim made by the petitioner cannot be sustained and the same is rejected. The writ petition, therefore, stands dismissed being devoid of merit.