

(2014) 08 DEL CK 0005
In the Delhi High Court
Case No : W.P.(C) 5443/2014

Brahm Prakash

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Citation : (2014) 08 DEL CK 0005

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Anil Mittal and Anuj Kumar Ranjay, Advocate for the Appellant;
Latika Chaudhury and Gunjan Bansal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner has preferred the present petition to assail the order dated 21.03.2014 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No.2737/2012. The Tribunal has dismissed the application of the petitioner on the ground that the same suffers from laches and limitation, and is also without any merit.

2. The claim made by the petitioner in his original application was primarily to seek fixation of his pay in the same pay scale as payable to Welder with effect from 01.10.1985, and for arrears of salary with interest.

3. The petitioner was offered appointment to the post of Assistant Welder in the pay scale of Rs.248-6-296-7-345 on 13.09.1985, and was appointed to the said post on 01.10.1985 on temporary basis. He was subsequently regularised on 03.10.1986.

4. The case of the petitioner was that certain persons had been appointed as Welder in the year 1982-83, who had been placed in the pay scale of 380-12-500-560, although they were not qualified from the ITI. His further case was that from the very beginning he was assigned the duties of a Welder, as there was no distinction between the duty of a Welder and an Assistant Welder.

5. In 1991, when the recommendations of the 4th CPC were made applicable to the respondent DTC, the petitioner was placed in the pay scale of Rs.825-15-980-20-1200, which corresponded to the pre-revised pay scale of Rs.225-308. The petitioner claimed that he was entitled to be placed in the pay scale corresponding to the revised pay scale of Rs.1400-2300, which corresponded to the pre-revised pay scale of Rs.380-12-500-15-560, (which was being paid to the Welders). This was on the basis that the Welder and Assistant Welder were doing the same job.

6. The petitioner preferred W.P.(C.) No.1953/2007 before this Court, which was transferred to the Tribunal and registered as T.A. No.671/2009. Vide order dated 13.11.2009, the said T.A. was disposed of by directing the respondent to consider the case of the applicant for upgradation and revision of pay scale in skilled category. Since the said order was not complied with, the petitioner preferred C.P. No.600/2010. Along with its reply to the said contempt petition, the respondent filed an order dated 24.09.2010 before the Tribunal holding that the petitioner was not entitled to the pay scale or designation of a Welder. The said contempt petition was disposed of on 30.09.2010, granting liberty to the petitioner to challenge the order dated 24.09.2010. In consequence thereof, the petitioner preferred O.A. No.2737/2012.

7. The case of the petitioner was that he is a skilled worker being qualified from ITI; he has been doing the same job as carried out by a Welder; persons with lower qualifications were appointed as Welder and granted pay scale higher than that of the applicant, and; he is entitled to the same pay scale on the principle of equal pay for equal work. He contended that he could not have been placed in the revised pay scale of Rs.825-1200, which corresponded to the pre-revised pay scale of Rs.225-308, when he was appointed in the pay scale of Rs.248-345. This had resulted in reducing his pay scale, which is impermissible in law.

8. The respondent opposed the petition by contending that prior to 24.01.1984, there was only one post of Welder in the pay scale of Rs.380-560. On the said date, the Central Government introduced a three tier system in repair and maintenance department of the DTC. Consequently, the following categorisation of posts were laid down in a three tier system to provide promotional avenues to all employees, taking into consideration the policies framed by the government or department:

i) Grade I -- Highly Skilled

ii) Grade II -- Skilled

iii) Grade III -- Semi Skilled

9. As per the three tier system, an Assistant Welder is promoted to the post of Welder on the basis of seniority cum fitness. The pay scale of these categories were revised with effect from 01.06.1983, and Assistant Welders were given the pay scale of Rs.225-308 in place of Rs.248-345.

10. Upon implementation of the 4th CPC, the Assistant Welders were placed in the pay scale of Rs.825-1200 and Welder Grade II were placed in the pay scale of Rs.975-1660. The respondent denied that the job of an Assistant Welder and that of a Welder are the same.

11. The Tribunal raised the issue of limitation. The Tribunal held that though the petitioner was granted the revised pay scale of Rs.825-1200 with effect from 01.01.1986 on 03.04.1991, he raised the grievance about the same for the first time by making a representation only on 31.01.2007. The Tribunal relied upon the decisions of the Supreme Court in D.C.S. Negi v. Union of India & Ors., SLP (CC) No.3709/2011 decided on 07.03.2011; Ratan Chandra Sammanta and others Vs. Union of India and others, ; Union of India (UOI) and Others Vs. M.K. Sarkar, ; State of Haryana and Others Vs. Miss Ajay Walia, , and; Ex. Capt. Harish Uppal Vs. Union of India (UOI) and Others, , and held that the cause of action had arisen when the petitioner was allegedly granted a lower pay scale as Assistant Welder, and that he had initiated action more than 21 years thereafter. The Tribunal held that the cause of action had arisen some time in 1985 and 1991, but the petitioner neither approached the respondent nor any other appropriate forum, or the Tribunal within the prescribed period of limitation. The petitioner did not even explain the inordinate delay in filing the representation, or the writ petition. The Tribunal also rejected the petitioners contention that the limitation had started to run on 24.09.2010, when the order rejecting the petitioners claim was passed by the respondent.

12. On merits, the Tribunal rejected the petitioners claim since his appointment had been made after the introduction of the three tier system, whereunder the post of Assistant Welder was assigned the pay scale of Rs.248-345, and the post of Welder was a promotional post from the post of Assistant Welder.

13. The claim for pay parity with that of the Welders was rejected by the Tribunal by observing that the principle of equal pay for equal work was not applicable. The Tribunal relied upon, in this regard, a decision of the Supreme Court in S.C. Chandra and Others Vs. State of Jharkhand and Others, , wherein, it had been, inter alia, held that there should be wholesale and complete identity in respect of the work between the two groups before the said principle of equal pay for equal work could be invoked. The Tribunal held that the petitioner had not produced any material to substantiate his plea that the Assistant Welder and Welder performed the same duties and functions, and discharged the same responsibilities.

14. The petitioner has once again sought to urge his claim for revision of his pay scale to that admissible to Welder before this Court. However, even before this Court, the petitioner has not been able to establish any legal basis for his claim. Having accepted the appointment offered to the post of Assistant Welder in the pay scale of Rs.248-345, the petitioner could not have subsequently, after more than 22 years of appointment, sought the higher pay scale of Welder. The petitioner has claimed that he is a qualified person from ITI and on that account

he deserves to be fixed in the pay scale as admissible to Welder. However, he has failed to point out any rule, which states that the acquisition of the said qualification, per se, entitles the employee to the pay scale of a Welder. Since the petitioner was appointed as an Assistant Welder, he cannot claim the pay scale of a Welder - which is a promotional post, merely on the ground that he had qualification even higher than that prescribed for Welder.

15. Though the petitioner has sought to contend that he is doing the same job as that done by a Welder, however, he has failed to establish on record that the responsibilities assigned to a Welder and an Assistant Welder is the same. He does not deny that the post of a Welder is a promotional post from that of an Assistant Welder. The petitioner has also not explained the inordinate delay in raising his grievance after nearly 27 years of his appointment as an Assistant Welder in the pay scale granted to him.

16. For the above reasons, there are no grounds to interfere with the order of the Tribunal. The writ petition is accordingly dismissed.