
(2012) 11 GAU CK 0043

In the Gauhati High Court

Case No : Writ Petition (C) No. 938 and 948 of 2012

Damodar Panda

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Citation : (2013) 2 GLT 778

Hon'ble Judges : Anima Hazarika, J; Amitava Roy, J

Bench : Division Bench

Advocate : M. Chanda, Mr. S. Choudhury, Mrs. U. Datta and Mr. S. Nath, for the Appellant; D.C. Chakraborty, Central GA, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The successive challenges witnessed by the instant proceedings have been amounted on the verdicts of the learned Central Administrative Tribunal, Guwahati, (for short, hereinafter to be referred to as the learned Tribunal) rendered in Original Application No. 119/2010 and 128/2011 lodged by the petitioner upholding the decisions of the respondents to recover an amount of Rs. 24,914/- earlier paid to him by way of Transfer Travelling Allowance in connection with his posting as Engineering Assistant in the Office of the Chief Engineer (NEZ), AIR & DDK at Guwahati on his recruitment thereto. We have heard Mr. M. Chanda, learned counsel assisted by Ms. U. Dutta, Advocate and Mr. S. Choudhury, Advocate for the petitioner as well as Mr. D.C. Chakraborty, learned Central Govt. counsel for the respondents.

2. The factual backdrop, in short, can be outlined from the pleadings of the parties. The petitioner had initially joined as Technician at All India Radio, Jeypore, Orissa in the year 1993. A process for recruitment of 281 Engineering Assistants was initiated by the advertisement dated 7-13 July, 2007 issued by the Chief Engineer (Trg.), STI(T), AIR & DD, Radio Colony, Delhi. Apart from indicating the 5 Zones in which the network therefor was divided including amongst others the North Eastern Region, the conditions of eligibility was also

enumerated therein vide Note-3 in the advertisement. Departmental candidates who had put in atleast three years of continuous service as on 10.08.2007 in All India Radio and Doordarshan and other media unit under Ministry of Information and Broadcasting in the post of Technician/Sr.Technician or equivalent posts were also permitted to participate in the process. For them age relaxation as provided therein was also assured.

3. The petitioner being eligible as per the criteria advertised for the post aforementioned submitted his candidature and on due selection was offered appointment to the post of Engineering Assistant vide communication No. CE(NEZ)/1(26)/2007-S/Rectt./16109 dated 10.03.2008 in the Office of the Chief Engineer (NEZ), AIR & DD, Guwahati on the terms and conditions enumerated therein. While indicating that the post offered carried the pay scale of Rs. 5000-150-8000/- it was clarified that the initial pay would be fixed on the analogy of the rules and orders of Government of India for the time being in force and that he would be entitled to draw allowance at the rates admissible subject to the conditions laid down in rules and orders governing the grant of such allowances, in force from time to time. Clause (v) & (vi) of the letter of offer stipulated that he would be liable to be posted and transferred within the zone and also beyond anywhere in India as and when required. That he would not be entitled to any travelling allowance for joining the post unless he was holding a substantive appointment under the Government or employed under the Central Government in a temporary capacity but had completed probation period satisfactorily was also disclosed therein Admittedly the petitioner at all relevant time was a Central Government servant and he continues to be so even as on date.

Having accepted the offer of appointment, he was, vide order No. JPR-1(4)/2008-S/931 dated 24.03.2008, relieved from his duties as Technician at All India Radio, Jeypore, Orissa on 31.03.2008. It was also indicated that he would be entitled to travelling allowance for joining the post of Engineering Assistant at CE (NEZ), AIR & DD, Guwahati. He was advised to return the Identity Card, Library Books and Tapes etc., if any issued to him and also to ensure that nothing was outstanding against him so far as that Office was concerned. By order No. JPR-8(6)/2007-2008/AC dated 27.03.2008 the Drawing & Disbursing Officer, Prasar Bharati, Broadcasting Corporation of India, All India Radio, Jeypore, Orissa conveyed the sanction of the appropriate authority under Rule 222 of the General Financial Rules 1963 for grant of Transfer Travelling Allowance (for short, TTA) of Rs. 20,000/- to him on his "transfer" to the post of Engineering Assistant at CE(NEZ), AIR & DD, Guwahati. The order disclosed that the advance so sanctioned would be adjusted in the Final TTA claim.

4. Pursuant to the above, the petitioner joined his new assignment as Engineering Assistant in the Office of the Chief Engineer (NEZ), AIR & DD, Guwahati on 03.04.2008 as stand affirmed by the order No. CE (NEZ)/21(1)/DP/2008-8/6960 dated 11.04.2008 with a copy to the Head of Office, All India

Radio, AT/P.O-Jeypore, Dist. Koraput(O), PIN: 764 005. The latter was thereby requested to forward the petitioner's service book alongwith up-to-date leave account and LPC to the Office at the new place of posting. Subsequent thereto, vide order No. CE (NEZ)/21(1)/2008-S/191895 dated 1.8.2008, following his posting in the same capacity at DDK(PPC), Guwahati he stood relieved from the Establishment of the Chief Engineer (NEZ), AIR & DD, Guwahati on 31.08.2008. On this occasion as well, he was instructed to return the Identity Card, CGHS Card and all other office articles if any issued to him and also ensure that no dues remained outstanding to him so far as that Office was concerned.

5. It was thereafter that the petitioner laid his claim before the Director of PPC(NE) Doordarshan, Guwahati for double House Rent Allowance (for short, to be referred to as "HRA") in terms of Government Office Memorandum No. 2(38)/E-ii(B) dated 24.09.2003 allowable to a Central Government employee on his/her posting amongst others to the North Eastern Region included in "specified regions" as referred to therein, from outside or transferred within the territorial limits thereof. This was on 09.02.2008. He reiterated his request on 18.11.2009 and 08.03.2010 whereafter by Memorandum No. PPC(NE)/DD/GUW/67(11)/AC/09-10 dated 14.06.2010 the same was declined. Being aggrieved the petitioner approached the learned Tribunal with OA No. 119/2010 which was disposed of on 16.11.2010 requiring the respondents to examine his request for double HRA in terms of the aforementioned office memorandum, more particularly, with reference to the type of his recruitment to the post of Engineering Assistant i.e. direct recruitment or promotion. By order No. PPC(NE)/GUW/119(2010))/2011-S/6727 dated 18.02.2011 of the Senior Administrative Officer, Prashar Bharati (BCI) Programme Production Centre (NE), Doordarshan, Guwahati his claim for double HRA having been rejected construing his induction as Engineering Assistant by way of direct recruitment rendering him disqualified to avail the said benefit in terms of the Office Memorandum dated 24.09.2003, he turned to the learned Tribunal again with OA No. 128/2011, which has, by the impugned judgment and order been dismissed.

6. As during the pendency of the above assailment before the learned Tribunal the respondents vide communication No. CE(NEZ)/8(3)/2011-AC/3155 dated the July 29th/August 1st, 2011 sought to recover an amount of Rs. 24,914/- out of the sum of Rs. 27,094/- released by way of TTA under Rule 222 of the General Financial Rules referred to hereinabove, he impeached the said decision as illegal in OA No. 179/2011, By judgment and order dated 09.12.2011 assailed in WP(C) No. 938/2011, the learned Tribunal sustained the decision of the respondents.

7. The respondents in their affidavit-in-opposition, in reiteration of their stand in their pleadings before the learned Tribunal while admitting the participation of the petitioner in the selection process involved as an eligible departmental candidate maintained it to be by way of direct recruitment with no nexus, whatsoever, with his earlier service in All India Radio, Jeypore, Orissa and thus sought to justify the impugned decision. On that plea, while construing his past

services in Orissa as countable only towards pension as per the relevant rules, it was asserted that he was wrongly sanctioned and released the TTA of Rs. 27,094/-. According to them, he was only entitled to travelling allowance of Rs. 2180/- and thus contended that the decision to recover the excess amount of Rs. 24,914/- was valid in law. The impugned decision was sought to be endorsed with reference to various clauses in the letter offering appointment, which according to them, clearly demonstrated that his induction as Engineering Assistant was not by way of promotion but direct recruitment thus disentitling him to the claim for double HRA benefit as conceived of in the Office Memorandum dated 24.09.2003. They reiterated that the posting of the petitioner as Engineering Assistant in the North Eastern zone was on the basis of direct recruitment and not as a consequence of promotion to that post or transfer thereto.

8. The learned Tribunal on a consideration of the pleadings of the parties and the arguments advanced thereof, as alluded hereinabove, rejected both the challenges of the petitioner. It sustained the plea of the respondents that his induction as Engineering Assistant was following his selection against direct recruitment quota and that the same did not amount to promotion. It also returned the finding that his posting in the North Eastern Region was not by transfer on promotion. According to the Tribunal therefore, in the available factual backdrop, the Office Memorandum dated 24.09.2003 was not available to the petitioner for claiming double HRA as envisaged therein. Vis-a-vis the issue of recovery, it held that the TTA was thus sanctioned and released wrongly to the petitioner due to administrative error which was permissible to be corrected. The recovery of the aforementioned amount was thus sustained as valid.

9. Mr. Chanda, has urged that the advertisement initiating the process for selection and recruitment of Engineering Assistant having permitted participation of an eligible departmental candidate as referred to therein, the denial of the benefit for double HRA in terms of the Office Memorandum dated 24.09.2003 to the petitioner on the reasons stated by the respondents and affirmed by the learned Tribunal is, ex-facie, un-tenable in law and on facts. Not only was the petitioner, admittedly, an eligible departmental candidate to compete for the post of Engineering Assistant as advertised, in absence of any indication therein or in the Office Memorandum dated 24.09.2003 of a possible disqualification to avail the benefit of double HRA, the denial thereof is not only impermissible in law but if sustained would be wholly un-reasonable, unfair, unjust and discriminatory. He urged the H.Y. that in absence of any indication in the advertisement as well as in the Office Memorandum dated 24.09.2003 rendering the petitioner ineligible for the facilities ensured thereby, on his appointment as Engineering Assistant through the selection process, the respondents are estopped from taking any such stand. Referring to the offer of appointment and the clauses relevant thereto as enumerated in the letter dated 10.03.2008 as well as the administrative orders issued thereafter from time to time to facilitate his joining at the new place of posting, the learned counsel has urged that it would be

apparent therefrom that he continued to be treated as an employee of the concerned department and was entitled to avail amongst others the benefit of double HRA as contemplated by the Office Memorandum dated 24.09.2003. According to him, the respondent's plea of continuity of his service only for the purpose of pension is an apparent departure from such contemporaneous documents and is thus untenable. Referring against others to the order No. CE (NEZ)/16(2)/2007-S/18147 dated 10.6.2008, Mr. Chanda has sought to impress upon us that as the petitioner had been accorded pay protection as per FR 22(1)(a)(i) it was an unimpeachable proof of the fact that he continued to be an employee of the department even on his appointment as Engineering Assistant in the Office of Chief Engineer (NEZ), AIR & DDK at Guwahati and thereafter. That FR 22(1)(a)(i) imply fixation of pay on assumption of higher responsibility in a promotional post was underlined by Mr. Chanda as well in endorsement of the petitioner's claim of being an employee of the Department. According to him, the petitioner being a departmental employee was amongst others equipped with necessary experience besides being academically and otherwise eligible for the post of Engineering Assistant and thus in any view of the matter, to deny him the benefit of the Office Memorandum dated 24.09.2003 by treating him at par with the fresh direct fresh recruits would be wholly illogical, irrational, unfair and unjust. On the same analogy, Mr. Chanda argued that the petitioner being accepted to be a departmental employee and even after his appointment as Engineering Assistant he was sanctioned TTA under Rule 222 of the General Financial Rules. The decision of recovery of the excess amount as perceived by them subsequent thereto is thus patently arbitrary, null and void he pleaded. The learned Tribunal having totally misconstrued the contextual facts including the contents of the letter of offer of appointment as well as Office Memorandum dated 24.09.2003, the impugned judgment and orders are expressly unsustainable in law and are liable to be interfered with he insisted.

10. Mr. Chakraborty in reply submitted that though the advertisement permitted a departmental employee if otherwise qualified to participate in the selection process, having regard to the fact that the petitioner was appointed as Engineering Assistant in a post in the direct recruitment quota, he ceased to be an employee thereafter for the purpose of the Office Memorandum dated 24.09.2003 and thus no interference with the impugned judgments and orders is warranted. According to him, the respondents having taken the decision for the continuity of the service only for the purpose of pension, the forwarding of the service book alongwith the up-to-date leave account and LPC to the Office of the new place of posting, release of TTA erroneously and pay fixation in terms of FR 22(1)(a)(i) are of no determinative significance and thus are of no consequence in favour of the petitioner. For this Mr. Chakraborty, inter alia, drew our attention to Clause (i), (v) & (vi) of the letter dated 10.03.2008 offering appointment to the post of Engineering Assistant to the petitioner.

11. We have applied ourselves to the pleadings of the parties, the documents on records and the arguments based thereon. Admittedly at the time of participation

of the petitioner in the selection process for appointment as Engineering Assistant initiated by the advertisement dated 7-13 July, 2007, he was serving as Technician at All India Radio, Jeypore, Orissa. Having served in the said capacity since the year 1993, he, thus at that relevant point of time had a service experience of about 14 years to his credit. While the advertisement aforesated permitted the departmental candidates possessed of the other qualifications as prescribed and having atleast 3(three) years of continuing service as on 10.08.2007 in the post of Technician/Sr. Technician or equivalent posts to participate in the process, it did not predicate any disqualification for them if appointed to the post of Engineering Assistant to otherwise avail the benefits contemplated by the Office Memorandum dated 24.09.2003. The letter dated 10.03.2008 extending the offer of appointment as well did not indicate any such detrimental consequence. On the other hand, though by the advertisement, the selection process to fill up the post of Engineering Assistant by direct recruitment was contemplated, participation of the eligible departmental candidates was solicited thereby and the petitioner having complied with the conditions of eligibility as mandated offered his candidature bonafide and was eventually selected on due assessment of his merit and suitability. As the orders dated 24.03.2008, 27.03.2008, 11.04.2008 and 01.08.2008 would testify, the respondents not only construed his posting at the North Eastern zone to be by way of transfer consequent upon his appointment as Engineering Assistant, the sanction of TTA under Rule 222 of the General Financial Rules 1963, fixation of pay under FR 22(1)(a)(i) providing pay protection and for assumption of higher duties and responsibilities, the requests made to the Head of Office, All India Radio, AT/P.O-Jeypore, Dist. Koraput(O) to forward his service book alongwith up-to-date leave account and LPC to the Office at the new place of posting without any rider attached thereto, in our opinion, expressed their mind to affirm continuance of his service under the Department without any break. To this extent, the stand of the respondents in their pleadings that the protection of his past services only for the purpose of pension is a clear departure from the arrangement and contemplation as exhibited by the administrative orders referred to hereinabove following his appointment as Engineering Assistant and posting in that capacity in the Office of the Chief Engineer (NEZ), AIR & DD, Guwahati.

12. Clause VII of the Office Memorandum dated 24.09.2003, which deals with "Double House Rent Allowance" is to the effect that an employee not in occupation of Government accommodation and posted to the specified regions from outside or transferred within the regions can claim two HRA's as enumerated therein. There is no wrangle at the Bar that the Office of the Chief Engineer (NEZ), AIR & DD, Guwahati is located in the North Eastern Region comprehended within the ambit of the expression "specified regions" as referred in the Office Memorandum dated 24.09.2003. Whereas the petitioner contends that his appointment as Engineering Assistant in the direct recruitment quota, notwithstanding, he continued to be an employee to avail the benefit of double

HRA, according to the respondents he ceased to be so on such recruitment, the post of Engineering Assistant being lodged in the direct recruitment quota.

13. On a cumulative consideration of the attending facts reinforced by the administrative orders referred to hereinabove, we have not been able to persuade ourselves to sustain this plea of the respondents. The permissibility of the participation of the departmental employees in the selection process as in the case in hand, for appointment to a higher post in the direct recruitment quota, per se, according to us cannot denude them either of their traits as employees for the benefit of their past services in that capacity or strip them of that status and thus deny them the benefits to which they would have been otherwise entitled under the said memorandum. This is more so, in absence of any indication to that effect either in the advertisement or in the Office Memorandum contemplating such an eventuality.

The materials on record, on the other hand, convincingly suggest that during the adjudication undertaken by the learned Tribunal, the respondents were proceeding on the basis that the petitioner is a departmental employee having been appointed to a higher post and that his posting in the North Eastern Region was by way of transfer on promotion. On that premise not only he was granted pay protection, he was sanctioned as well the TTA under Rule 222 of General Financial Rules which is contemplated in case a permanent or a temporary Government servant while on duty or on leave is required to proceed on transfer to a place as indicated in the concerned order. In this context, the petitioner's plea of arbitrary denial of the benefit of the Office Memorandum dated 24.09.2003 in the facts and circumstances of the case by treating him at par with the fresh direct recruits by totally ignoring the weightage to which he is entitled, in view of his past services, cannot be lightly brushed aside. Noticeably the petitioner cannot be held to be a party in any fraud or wrong doing in the process of sanction of the TTA of Rs. 27,094 initially sanctioned under Rule 222 of the General Financial Rules. The recovery, as the impugned orders to that effect would indicate, stem as well from the conclusion of the learned Tribunal that the petitioner was not entitled to a composite transfer grant earlier accorded due to administrative error.

14. In the face of the determination made by this Court holding that the petitioner on his appointment as Engineering Assistant in the process initiated by the advertisement dated 7-13 July, 2007 in the direct recruitment quota did not cease to be a departmental employee, we are of the unhesitant conclusion that the impugned judgments and orders are unsustainable in law and on facts and are liable to be interfered with.

15. In the wake of the above, the decisions of the learned Tribunal impugned before us are hereby set aside. As a corollary, the impugned order dated 18.02.2011 (Annexure 16) in WP(C) No. 948/2012, the letter dated 29.07.2011/01.08.2011 (Annexure 6) and memorandum dated 25.01.2012 (Annexure 9) in WP(C) No. 938/2012 are also annulled. The petitions are allowed.

16. The petitioner would be granted the consequential benefits in terms of the Office Memorandum dated 24.09.2003 to which he is found entitled in the facts and circumstances of the case. No costs.