(2015) 08 DEL CK 0114

In the Delhi High Court

Case No : LPA 89 of 2014

D.C. Mehta APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Citation : (2015) 08 DEL CK 0114

Hon'ble Judges : Pradeep Nandrajog, J;Mukta Gupta, J

Bench : Division Bench

Advocate : K.K. Rohtagi, for the Appellant

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J—The appellant was a Wing Commander with the Indian Air Force and applied to the erstwhile National Airport Authority of India when applications were invited to appoint a suitable candidate as Director (Administration). The advertisement clearly stated that the post advertised was in the scale of pay : Rs. 3700-5000.

2. Of the five candidates called for the interview the appellant was one of them. The Board of the National Airport Authority of India which conducted the interview selected the appellant and while penning its recommendation on July 12, 1990 recorded that the current emoluments drawn by the appellant from the Indian Air Force totalled Rs. 8213.00 and that as per the advertisement in question, he would be placed in the beginning of the scale and would be receiving only Rs. 5930.00. The Board also noted that the appellant would be losing perks like free rations. It recommended that the appellant should be offered pay in the scale of Rs. 4100-5300. Thereafter, on September 03, 1990, at the direction of the Chairman of the erstwhile National Airport Authority of India, its Company Secretary recorded on the file, that the post of Director (Administration) should be put in the scale of pay Rs. 4100-5300.

3. But the appellant accepted the letter offering appointment to him as Director

(Admn.) in the scale of pay Rs. 3700-5000. He did not demur.

4. For the first time on February 20, 1991, the appellant raised the grievance of the scale of pay in which he was placed and prayed that he be put in the scale of Rs. 4100-5300 and pleaded that said assurance was given to him when he accepted the offer to be appointed as a Director (Admn.); and we simply note at this stage that the so called assurance pleaded by the appellant was allegedly orally made to him by the Chairman of the Board of the National Airport Authority of India.

5. The appellant preferred another representation on November, 1993 followed by another representation dated July 27, 1994.

6. On September 30, 1994 the erstwhile National Airport Authority of India issued an Establishment order upgrading the post of Director (Administration) by putting it in the scale of pay of Rs. 4100-5300 but with effect from July 21, 1994.

7. The grievance of the appellant before the learned Single Judge was two-fold. Firstly, that the assurance given to him when he joined the erstwhile National Airport Authority of India had to be honoured because but for the assurance he would not have joined the post by foregoing the free rations which he was receiving as a Wing Commander in the Indian Air Force and additionally receive less pay. His second grievance was that the Establishment Order dated September 30, 1994 recognized the anomaly and the injustice caused to the appellant evidenced by the fact that the post held by the appellant was put in the higher pay scale and argued that there was no reason to upgrade the post from a prospective date.

8. The learned Single Judge has declined relief noting that the notes on the file, dated July 12, 1990 and September 03, 1990, are merely recommendations and unless accepted by the Board of Directors of the erstwhile National Airport Authority of India could not create any right in favour of the appellant. The learned Single Judge has held that the post of Director (Administration) was advertised by making it known that it was in the scale of pay Rs. 3700-5000 and that the letter offering appointment to the appellant clearly told him that he would be placed in the scale of pay Rs. 3700-5000 which was accepted by the appellant without demur. Appellant''s plea of parity with the post of Director (Pay and Accounts) which, since inception was, in the scale of pay Rs. 4100-5700 has been turned down by the learned Single Judge on the reasoning that the concept of equal pay for equal work is not applicable because the two posts had different duties.

9. The arguments in the appeal by learned counsel for the appellant were the same as were advanced before the learned Single Judge.

10. Pithily put, the argument of the appellant is that the National Airport Authority was formed under the National Airport Authority Act, 1985 and was following the CDA pay scales applicable to the employees of the Central

Government. All Directors were placed in the pay scale Rs. 1500-2000. An anomaly arose when the National Airport Authority, for the purposes of implementing the recommendations of the 4th Central Pay Commission merged two pay scales : Rs. 1500-2000 and Rs. 1500-1800 and gave the replacement scale Rs. 4100-5300 to those in the pay scale Rs. 1500-2000 but to the scale Rs. 1500-1800 the replacement scale given was Rs. 3700-5000. The result was that Director (Admn.) erroneously being placed in the pay scale Rs. 3700-5000 but Directors in other Branches such as Air Traffic Control, Equipment, Communications placed in the pay scale Rs. 4100-5300. Nobody complain because the post of Director (Administration) was filled up by officers on deputation. As per the appellant even Director (Fin./Actt.) was erroneously placed in the pay scale Rs. 3700-5000, but nobody complained because the post was filled up on deputation.

11. As per the appellant when the post of Director (Admn.) was advertised by the National Airport Authority he was working as a Wing Commander in the Indian Air Force and was drawing a basic pay of Rs. 5,450/-. He was entitled to free rations in sum of Rs. 2,000/- and a flying pay in sum of Rs. 1,200/- apart from dearness allowance. He was promised that his last drawn pay would be protected by putting him in the pay scale Rs. 4100-5300. According to the appellant he wrote the letter dated February 20, 1991 because the National Airport Authority itself recognized the anomaly which had crept up when the recommendations of the 4th Central Pay Commission were implemented. As per the appellant the anomaly was recognized when the National Airport Authority of India upgraded the scale of pay when the office order dated September 30, 1994 was issued. Learned counsel for the appellant relied upon the decision reported as Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, AIR 1974 SC 471 : (1974) 1 SCC 242 : (1974) 2 SCR 544 . to urge that if anomaly is accepted, its rectification must be from the date when the anomaly came into existence. Citing the decision reported as Haryana State Minor Irrigation Tubewells Corporation and Others Vs. G.S. Uppal and Others, AIR 2008 SC 2152 : (2008) 106 CLT 448 : (2008) 118 FLR 656 : (2008) 6 JT 108 : (2008) 7 SCALE 44 : (2008) 7 SCC 375 : (2008) 2 SCC(L&S) 562 : (2008) AIRSCW 3388 . learned counsel urged that removal of a pay anomaly by rectification has to relate back to the date when the anomaly came into being.

12. To appreciate the contentions advanced by the appellant we need to transport ourselves to the year 1972. All airports in India were under the direct control of the Ministry of Civil Aviation, Government of India. On April 01, 1972 by an act of Parliament an entity name the International Airport Authority of India was constituted and four international airports of Delhi, Bombay, Calcutta and Madras were handed over to the said International Airport Authority of India. Employees working in the airports were given the option to join the International Airport Authority of India with explicit understanding that they would continue to receive pay under the CDA Pattern till the year 1977 but thereafter the pay scales would be converted into the IDA Pattern. Remaining airports continued to

be managed directly by the Ministry of Civil Aviation.

13. In the year 1986 the National Airport Authority was formed and all remaining airports under the Ministry of Civil Aviation came under the control of the National Airport Authority. The employees working in these airports became employees of the National Airport Authority and since as employees of the Central Government were receiving salary under the CDA pattern continued to receive salary under the CDA pattern as employees of the National Airport Authority. The Directors under the National Airport Authority were receiving salary in two different pay scales i.e. Rs. 3700-5000 and Rs. 4100-5300. At that time the Director (Admn.) under the National Airport Authority was handling duties and responsibilities of the personal division as well, but by the year 1990 (when the appellant joined) the post of Director (Pers.) had been created and there was a substantial reduction in the job to be performed by Director (Admn.).

14. The Department of Personal, Government of India had issued an office memorandum as per which all employees appointed after January 01, 1989 were to be placed in the IDA Pay Scale. Thus, the two notings on the file on which the appellant relies, when placed before the Competent Authority resulted in the decision being taken that everything should be deferred to await the outcome of the introduction of the IDA Pay Scales.

15. On September 30, 1994 the erstwhile National Airport Authority issued the establishment order upgrading the post of Director (Admn.) in the scale of pay Rs. 4100-5300, but the reason we find was not any anomaly detected or found as alleged by the appellant but due to the fact that by said year the responsibility of the post of Director (Admn.) had been increased, a fact borne out from the 51st Meeting of the Board of Directors of the National Airport Authority. It is minuted in the following words:-

"The Board discussed the additional duties and responsibilities to be attached to the post of Director (Administration) in NAA. The Board was informed that the additional responsibilities being given to the Director (Admin) include management of Benevolent fund, Medical facilities, Printing Press, security of Headquarter building, issue of liveries and dress to officers and staff, residential accommodation to the employees posted at Headquarter, welfare activities, general discipline, law and order and liaison with Govt., and civil authorities. The board was also informed that some of the existing responsibilities of the Public Relation Manager (PRM) are considered to be allocated to the Director (Administration) consequent upon the retirement of the PRM on 31.07.1994. The Board accepted these facts and approved the proposal for upgrading the post of Director (Administration) to the pay scale of 4100-5300."

16. Though recommended to be upgraded with effect from July 31, 1994, vide office order dated February 13, 1995 the National Airport Authority upgraded the post of Director (Admn.) by putting it in the pay scale Rs. 4100-5300 with effect from May 20, 1994.

17. Subsequently, National Airport Authority of India and International Airport Authority of India were merged with effect from April 01, 1995 and the respondent No. 2 : Airport Authority of India was constituted.

18. Since under the National Airport Authority of India and the International Airport Authority of India posts of similar nomenclature were in different pay scales having different rules and regulations the need was felt to have a common recruitment rule and unified pay structure. It was all the more necessary because by said year the International Airport Authority of India was following the IDA Pay Scales and the National Airport Authority of India was following the CDA pattern. Vide letter dated June 16/18, 1996 the IDA Pay Scales were introduced for the employees of the erstwhile National Airport Authority of India with retrospective effect from January 01, 1989 and as a result thereof the pay of the appellant was fixed retrospectively in the IDA Pattern. In this manner the employees of the erstwhile National Airport Authority of India and the International Airport Authority of India who had become employees of the Airport Authority of India started receiving salary under the IDA pattern but the issue of unified recruitment rules was taken forward. On February 09, 1998 the Airport Authority of India issued the office order reflecting the merger of the scales of pay and their consequent replacement, and vide clause IV of the office order Directors of the erstwhile National Airport Authority who were in the IDA Pay scales of Rs. 8250-10050 for at least five years as on April 01, 1996 were placed in the replacement pay scale of Rs. 11500-13500 and thus the appellant was placed in said IDA Pay Scale with effect from May 20, 1994 since with effect from said date the post of Director (Admn.) had been upgraded to the pre-revised CGA Pay Scale of Rs. 4100-5300.

19. It assumes importance to note that the appellant never raised any grievance in the year 1994 when the post held by him was upgraded in the pay scale Rs. 4100-5300 but prospectively. The appellant never claimed that said upgradation should be made retrospectively. The grievance of the appellant emerged from the fact that only those Directors who had worked for five years as of April 01, 1996 in the pre-revised pay scale Rs. 4100-5300 would be placed in the IDA Pay Scale Rs. 11500-13500. The appellant had not worked as a Director for five years as of April 01, 1996 in the revised pay scale of Rs. 4100-5300 and thus was placed in the IDA Pay Scale Rs. 8250-10050.

20. It is thus apparent that the upgradation of the posts and the placement thereof in the revised pay scales under the IDA pattern had nothing to do with the removal of an anomaly.

21. Under the circumstances we concur with the final view taken by the learned Single Judge, who has not dealt with the issue arising out of the pleadings of the parties in the context of the argument advanced by the appellant that it was a case of an anomaly being accepted and the grievance being that removal of an anomaly cannot be prospective and must relate back to the date when the anomaly came into being. Since we have not found any anomaly as having been

accepted the law declared in the two decisions relied upon by the appellant would not be applicable.

22. The appeal is accordingly dismissed but without any order as to costs.

