

(2013) 01 DEL CK 0320

In the Delhi High Court

Case No : Writ Petition (C) No. 24094 of 2005

Devinder Kumar Dagar

APPELLANT

Vs

Indian Oil Corporation Ltd. and Others

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0320

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; Rajat Navet and Mr. Kaushagra Pandit, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The background to the present petition is that the Petitioner was serving with the Delhi Police as a constable when he was informed by the Respondent No. 1, Indian Oil Corporation Ltd. ("IOCL"), by a letter dated 6th December 1996, that he had been selected to the post of Vigilance Assistant (Marketing) in the Marketing Division of IOCL at Calcutta. The appointment was initially for a period of two years by way of deputation in the pay scale of Rs. 2318-3913. It was stated therein that during the period of deputation, the Petitioner would have the option to draw the grade pay + deputation (duty) allowance, which should not exceed the maximum of the post in the parent cadre or to draw pay in the scale attached to the post in IOCL as per Office Memorandum ("OM") dated 9th December 1986 of the Department of Personnel & Training ("DoPT") as modified from time to time. By an inter office memo dated 18th February 1997, the Chief Vigilance Manager informed the DGM (Human Resources) that the Petitioner had opted for the IOCL scale of pay by his letter of that date. The case of IOCL is that there is an earlier OM dated 5th January 1994 issued by DoPT concerning the fixation of pay of the personnel on deputation. Clause 5.1 of the said OM reads asunder:

5.1 When an employee on deputation/foreign service elects to draw in the scale

of pay attached to the ex-cadre post, his pay may be fixed as under:

(i) Deputation from Central Govt. to Central Govt.

Pay may be fixed under normal rules.

(ii) In foreign service/Reverse Foreign Service

(a) when the pay scale of the post in the parent cadre and that attached to ex-cadre post are based on same index level and the DA pattern is also same, the pay may be fixed under the normal, Fundamental Rules.

(b) If the appointment is made to a post whose pay structure and/or DA pattern is dissimilar to that in the parent organisation, pay may be fixed by adding to his grade pay, one increment in the scale of his regular parent post (and if was drawing pay at the maximum of the scale, by the increment last drawn) and equating the pay so raised plus dearness allowance (and additional or ad-hoc dearness Allowance, Interim relief etc., if any) with emoluments comprising of pay plus DA, ADA, Interim relief etc., if any, admissible, in the borrowing organisation and the pay may be fixed at the stage in the pay scale of the ex-cadre post at which total emoluments admissible in ex-cadre post as above equal the emoluments drawn in the cadre and if there is no such stage, pay may be fixed at the next higher stage;

(iii) pay fixed under (i) and (ii) shall neither be less than the minimum of the scale of the ex-cadre post nor shall it exceed the maximum of that scale.

2. It is further stated that IOCL issued an inter office memo dated 12th March 1996, in which, in para 9, it was clarified as under:

9. Deputationists who have opted for IOC pay scales will have option to have their pay refixed in the Revised Officer Scale w.e.f. 1.1.92 or the date of joining on deputation in IOC, whichever is later. They would not be entitled to Fitment Benefit.

3. On 8th April 2000, an inter-office Memo was issued by the Chief Personnel and Administrative Manager, IOCL, inter alia, clarifying as under:

Sub.: Pay fixation of officers on deputation after the revision of pay scales of officers w.e.f. 1.1.97

We have received a query about the modalities of pay fixation of officers on deputation, who have opted for the IOC's pay scales after the revision of the officers pay scales w.e.f. 1.1.97.

In this connection, we may like to clarify that as per clause 4.3(c) of OM No. 2/29/92-Estt. (Pay-II) dated 5.1.94 issued by Department of Personnel & Training, the deputationists are allowed to revise the option whenever the pay scale of the parent department or the ex-cadre post is revised either prospectively or from a retrospective date.

Further, as per clause 5 (ii) (b) of the above OM dated 5.1.94, the pay of a deputationist who opts to draw pay in the scale of pay of the borrowing PSUs is to be fixed in the pay scale of the post at the stage next above, the amount arrived at by adding to his grade pay one increment in the scale of his cadre post in the Govt. and appropriate DA, ADA etc. and interim relief on the date of his deputation to PSUs, reduced by DA/IDA, interim relief, if any, applicable to the post in the undertaking.

Since, there is no stage in IOC's pay scale, the pay is to be fixed by rounding off to the nearest of Rs. 5/- as being done/in case of officers. Hence, the pay of an officer on deputation, who are already drawing IOC pay scale may be fixed accordingly. Similarly, such deputationists, who are now exercising their option to draw the pay scale of IOC after the revision w.e.f. 1.1.97 may also be revised on the above lines from the date of their joining or 1.1.97 whichever is later on receipt of their request in this regard.

4. On 4th January 2001, while the Petitioner was serving IOCL on deputation at Calcutta, a Memorandum of Settlement ("MoS") was entered into between the Marketing Division of IOCL and its workmen. In terms of the said MoS, the pay scales in the various grades were to be revised in accordance with a Fitment Formula set out thereunder. Clause 4.2.1 made it clear that the revision was applicable to "workmen on rolls as on 1.1.97 (or on the date of joining in respect of workmen who have joined on or after 1.1.97 and up to the date of signing of this Settlement)."

5. On 9th February 2001, consequent upon the MoS, IOCL issued circular No. 17 of 2001 specific to the issue of pay fixation of workmen on deputation. The said circular reads as under:

We draw your kind attention to our Circular No. 44/2000 dated 27/04/2000 (copy enclosed for ready reference) wherein we have enclosed CO's letter dated 08/04/2000 regarding pay fixation of officers on deputation after the revision of pay scales w.e.f.

Consequent upon implementation of Long Term Settlement (LTS) signed on 4.1.2001, with recognized unions in NR, WR, and SR, the pay of above workmen is to be refixed in the revised scale of pay w.e.f. date of joining with IOC.

As per terms and conditions of deputation, the deputationist will have option to draw the grade pay plus Deputation (duty) Allowance which should not exceed the maximum of the grade in parent cadre or to draw pay in the scale of pay attached to the post in the borrowing organization as per DOPT's OM No. 6/30/86-Estt (Pay-II), dated 9.12.1986 as modified from time to time.

As per policy, if the deputationist opts for borrowing Organization's pay scale, his pay is required to be fixed after adding to his grade, one increment in the scale of his cadre post in the grade, and appropriate DA, ADA etc. and interim relief on the date of his deputation to PSUs, reduced by DA/IDA, interim relief, if any

applicable to the post in IOC.

If the aggregate amount arrived at for fixation after adding up various element as above, exceeds the minimum of the revised pay scale in IOC, the said amount rounded off to the nearest Rs. 5, shall be his pay in the revised scale in IOC. If, however, it is less than the minimum of IOC scale, his pay will be fixed at the minimum of the pay scale.

You may please take necessary action accordingly.

6. By an inter office memo dated 10th August 2001, IOCL informed the Petitioner that his pay is being revised as under:

7. The Petitioner was aggrieved by the above communication because according to him his revised pay was fixed at Rs. 5,000 with effect from 21st January 1997 instead of Rs. 7,600 in terms of Clause 4.2.2 of the MoS. According to him, another similarly placed deputationist, Mr. Jitender Singh, who had joined IOCL from Central Reserve Police Force ("CRPF"), was granted all the benefits in terms of the MoS. He also stated that some other employees, similarly placed, had also been granted all the benefits of the revised pay scale pursuant to the MoS. Accordingly, the Petitioner sent a legal notice dated 28th February 2002, calling upon IOCL to redress his grievance. Thereafter, the Petitioner and another colleague of his, Mr. Kewal Krishan, filed WP (C) Nos. 3295 of 2002 and 3336 of 2002 in this Court. By an order dated 23rd May 2002, both the writ petitions were disposed of with a direction to IOCL to treat the legal notice dated 28th February 2002 as a representation and take a decision within three months.

8. On 7th October 2002, IOCL sent a letter to the Petitioner rejecting his representation. Thereafter, the Petitioner filed the present writ petition on 19th December 2005, inter alia, praying for a writ of certiorari to quash the inter office memo dated 10th August 2001 and the letter dated 7th October 2002 of IOCL rejecting his representation. The Petitioner also prayed for a writ of mandamus to IOCL to re-fix his pay in the revised pay scale of Rs. 5000-9500 in accordance with the MoS.

9. Finally, by an order dated 5th September 2011, the writ petition was allowed by the Court, as prayed for by the Petitioner. However, IOCL filed Review Petition No. 628 of 2011, placing on record certain circulars and orders which had not earlier been placed before the Court. By an order dated 1st March 2012, this Court allowed the review petition, recalled the order dated 5th September 2011 and set down the writ petition for hearing afresh.

10. Against the order dated 1st March 2012, the Petitioner filed LPA No. 371 of 2012, which was dismissed by the Division Bench on 16th May 2012 by the following order:

1. This intra-court appeal impugns the order dated 01.03.2012 of the learned Single Judge allowing the Review Petition No. 628/2011 preferred by the respondent and recalling the order dated 05.09.2011 allowing the WP (C)

24094/2005 preferred by the appellant. The learned Single Judge has now directed the writ petition to be listed for hearing before the Roster Bench.

2. The claim of the appellant in the writ petition was for revised pay scale for the period he served the respondent on deputation. The said claim was allowed vide judgment dated 05.09.2011 inter alia holding that in terms of the Conduct, Discipline and Appeal Rules, 1980 of the respondent, a person on deputation was included in the definition of employee. The respondent however in the Review Application contended that the appellant was to be governed by the Rules of deputation and not the Rules governing regular employees and pleaded that the Rules of deputation could not be earlier produced or relied on owing to communication gap between the various departments of the respondent. Several other documents were also filed along with the Review Application.

3. Learned Single Judge in the impugned order has found that though the respondent in the counter affidavit has taken the requisite pleas but had not placed the material in support thereof and which had been filed along with the Review Application. The learned Single Judge has found the same reason sufficient to have a re-look at the matter.

4. We are of the opinion that if the claim of the appellant is governed by the Rules of the respondent Corporation and has been adjudicated de hors the said Rules, it ought to be considered in the light of the Rules as it sets a bad precedent, having multifarious repercussions on the working of the respondent Corporation.

5. Even otherwise once the learned Single Judge has formed an opinion that the documents filed along with the Review Application are relevant to decide the controversy, we do not find any ground to, in exercise of the appellate jurisdiction, interfere with such opinion of the learned Single Judge. We are satisfied that the learned Single Judge has rightly exercised the review jurisdiction. However having regard to the fact that the learned Single Judge has heard the matter at length, we are of the view that instead of sending the matter to the Regular Bench, the writ petition be heard by the same Judge.

6. Accordingly, while dismissing this appeal, we direct the writ petition to be listed and heard by Justice S. Muralidhar.

11. Mr. R.K. Saini, learned counsel for the Petitioner referred to Office Memo dated 23rd April 1999 of the IOCL specifically fixing the basic pay of the Petitioner in Grade-II as Rs. 2,928 per month as on 21st January 1997. The same letter also fixed the basic pay as on 1st January 1998 as Rs. 2,988 and as on 1st January 1999 as Rs. 3,048. He accordingly submitted that Clause 4.2.2 of the MoS fully applied to the Petitioner. It stated in categorical terms that a "workman" who joined IOCL on or after 1st January 1997 and after the date of MoS shall be entitled to have his pay fixed in the revised scale of pay with effect from the date of joining as per the Fitment Formula under Clause 4.2.1 of the MoS. Consequently, the pay of the Petitioner had to be fixed in the scale of Rs.

5000-9400 with effect from 21st October 1997. He referred to Clause 3(i) of the Conduct, Discipline and Appeal Rules, 1980 ("Rules") to urge that an employee, including a person on deputation, is entitled to all the benefits that are accrued to the employees of IOCL under the MoS. Mr. Saini also referred to the case of Mr. Jitender Singh who had also come on deputation from CRPF and served as Vigilance Assistant in the Refinery Division of IOCL and had been given the benefit of the Fitment Formula under the MoS. Mr. Saini submitted that denial of the benefit of the Fitment Formula to the Petitioner on the basis of a subsequent clarification by IOCL would be arbitrary and discriminatory.

12. Mr. Rajat Navet, learned counsel for IOCL, submitted that the memo dated 10th August 2001 re-fixing the pay of the Petitioner had correctly applied the relevant circulars. There was a difference between re-fixing the basic pay and applying the Fitment Formula. It is urged that it was the OM dated 12th March 1996 which would apply and that Clause 4.2.1 of the MoS had no application. Mr. Navet submitted that extension of the Fitment Formula to Mr. Jitender Singh was a mistake and steps were being taken to recover the excess amounts paid to him. In any event, an erroneous decision in the case of Mr. Singh could not form a valid precedent.

13. The short question that arises is whether the Petitioner, who was on deputation of IOCL, would be entitled to the benefit of the Fitment Formula in terms of the MoS, notwithstanding the OM dated 5th January 1994, the inter-office memos dated 12th March 1996 and 8th April 2000 and the circular dated 9th February 2001 all of which applied specifically to deputationists. Although the definition of "employee" under the Rules includes a person on deputation, it is apparent from the circulars and interoffice memos referred to that IOCL has, from time to time stipulated and clarified the terms and conditions that would govern deputationists. Admittedly, the Petitioner opted for IOCL pay scale. Para 9 of the OM dated 12th March 1996 made it clear that the deputationists who opt for IOCL pay scale "would not be entitled to fitment benefit." The Fitment Formula under Clause 4.2.1 of the MoS should be understood also therefore as not being available to employees on deputation. If it was intended otherwise, then the MoS should have included a specific clause or explanation to that effect. It is, therefore, not possible to accept the submission of Mr. Saini that the MoS constituted an implied repeal of the OMs, memos and circulars specifically concerning deputationists. Having opted for the IOCL pay scale, the Petitioner was bound by its Rules and the OMs, memos and circulars issued by IOCL. Viewed in that light the letter dated 10th August 2001 revising the basic pay scale of the Petitioner was consistent with the Rules, OMs and circulars applicable to the deputationists serving in IOCL and can not be said to be arbitrary or illegal. For the aforementioned reasons, this Court does not find any merit in the petition. It is dismissed as such with no order as to costs.