
(2011) 09 DEL CK 0316

In the Delhi High Court

Case No : Writ Petition (C) No. 4602 of 2000

Dr. R.L. Arora

APPELLANT

Vs

I.C.A.R and Another

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(2)
Constitution of India, 1950 — Article 14, 16, 226, 306

Citation : (2011) 09 DEL CK 0316

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : R.K. Gupta and S.K. Gupta, for the Appellant; B.S. Mor, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioner, has challenged the order dated 9th February, 2000 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1332/94 titled as "Dr. R.L. Arora v. Indian Council for Agricultural Research through Director General and Anr." dismissing the original application of the Petitioner seeking the benefits of the judgment dated 28th January, 1992 passed in the case of Dr. M.L. Lodha and Ors. v. Indian Council for Agricultural Research and Ors. by the Tribunal as well as the benefits on the basis of the recommendations of the High Power Committee and a direction to the Respondents to consider the case of the Petitioner for appointment as Project Coordinator for which the Petitioner had already applied and made a representation dated 19th August, 1993.

2. Brief facts to comprehend the disputes are that the Petitioner had filed the original application seeking the benefits of the judgment rendered by the Tribunal in transfer application No. 8/1990 so far as it related to antedation of promotion to Grade S-II of the scientists of the Respondent. The Petitioner contended that due to inaction of the Respondents he had not been considered for recruitment to

the post which required Scientists in the pay scale of Rs. 4500-7300/-.

3. The Petitioner had joined as a Scientist in the year 1971-72 in the grade of Rs. 400-950/- which was subsequently revised to Rs. 700-1300/- with effect from 1st January, 1973. He was inducted in the grade S-I with effect from 1st October, 1975. The Petitioner contended that though he was assessed for S-II grade for the period ending December, 1976 but was granted two advance increments vide office order dated 29th September, 1978 with effect from 1st July, 1977 and was reassessed but was granted another increment with effect from 1st July, 1980 and two increments with effect from 1st July, 1981. Subsequently, S-II grade was given with effect from 1st July, 1982 vide office order dated 17th October, 1984. Later on, his name, however, did not appear in the office orders dated 28th December, 1988 and 11th December, 1992 issued by the ICAR, the Respondents, for promotion from Grade S-II to S-III.

4. Meanwhile, within the Respondent's institution, the Research Assistants in the pay scale of 425-700/- and Senior Scientists in the pay scale of 550-900/- were merged into one Grade of the scale of Rs. 550-900/- and the said service was known as Scientist-S. Similarly the grade of Class II Gazetted officers in the scale of 650-1200/- and Junior Class I Officers in the scale of 700-1300/- was merged into the scale of 700-1300/- and the service came to be known as Scientist S-1. Subsequently, the Govt. of India relaxed the ARS Recruitment Rule 19(2) in the case of Scientist S, which states that for a scientist to be eligible for the next Grade, they would have had to have rendered 5 years of service in the grade. As a consequence of relaxation, according to the Petitioner, the scientists who had put in 5 years of service were promoted to Scientist S-1, and the persons with a few months of service became Scientist S-2, since they were immediately assessed irrespective of the number of years in the said grade. Thus, the successful Class II Officers became senior to Class I Officers who could not be considered for assessment due to their non completion of 5 years of service. Aggrieved by this, the Class-I Officers had approached the High Court of Delhi seeking promotion by assessment as was done with the officers in the grade of Scientist-S.

5. The Petitioner had contended that in the said matter, an order dated 5th March, 1987 was passed by the High Court in Civil Writ Petition No. 1192/1984 titled as "Dr. M.L. Lodha v. ICAR and Ors." and a writ of mandamus was issued directing the Respondents to extend its decision contained in the letter dated 24th August, 1977 to the case of the Petitioner and to relax Rule 19(2) in favour of the Petitioner and other erstwhile Junior Class I Scientists who had been absorbed in Grade S-I with effect from 1st October, 1975 and also to give effect of the said relaxation to the case of eligible S-I Scientists for promotion with effect from 1st July, 1976 along with all the consequential benefits. Against the said order a SLP was filed which was disposed of with liberty to the Respondents to file a Review Petition before the High Court. The Review Application filed by the Respondents was allowed by the order dated 15th March, 1989 and the

operation of the order dated 5th March, 1987 was stayed. Later on, since it was notified that ICAR matters would be dealt by the Central Administrative Tribunal with effect from 15th July, 1987 u/s 14(2) of the Administrative Tribunal Act, 1985, the said petition was transferred to the Central Administrative Tribunal bearing Registration No. T-8/1990 with CMP No. 1192/84, which was decided by judgment dated 28th January, 1992. The Central Administrative Tribunal had directed the Respondents to refer the matter as well as the scheme of merit promotion to a High Power Committee to remove the anomalies which might have crept in. The High Power Committee was also directed to invite representations from all concerned officers and to consider them before arriving at a conclusion and thereafter give its recommendations.

6. According to the Petitioner, though he is similarly situated to the officers in the above mentioned matter, but still, the High Power Committee had not given any recommendations. The grievance was also that a blanket antedation was given to a favored group of scientists, resulting in some of the scientists with only a few months of service being made senior to those persons who although were eligible, but despite their seniority their cases had not been considered for promotion. The Petitioner referred to the case of Dr. P.G. Nair who was placed in S-3 Grade with effect from 1st January, 1983, the date on which he was promoted as S-2, hence alleging that it was clearly evident that Dr. Nair had never worked as Scientist S-2 even for a day till 1st January, 1983. It was also alleged that even persons on probation were given promotion without the completion of their probation. The grievance of the Petitioner was that his juniors had been promoted as Scientist S-III Grade while ignoring the case of the Petitioner and the Respondents were liable to relax the rules in case of all the similarly situated persons as per the direction of the High Court in M.L Lodha (supra).

7. The pleas and contentions of the Petitioner were contested by the Respondents contending, inter-alia, that pursuant to the recommendations made in T. No. 8/1990 titled as "Dr. M.L. Lodha v. Union of India", the recommendations of the High Power Committee were approved by the competent authority and the necessary orders for implementing the same were issued pursuant to which the promotion of the Petitioner to the Grade S-II from 1st July, 1982 in the scale of Rs. 1100-1600/- had been antedated to 1st July, 1981. The Respondents also claimed that the original application of the Petitioner was barred by limitation as the Petitioner was seeking relief on the basis of a judgment in Dr. L.M. Lodha v. Union of India (supra) which was passed in the year 1992, however, the original application was filed in 1994.

8. The Tribunal considered the pleas and contentions of the parties and held that it was not disputed that the Petitioner's appointment to Grade S-II was antedated from 1st July, 1982 to 1st July, 1981. Though the promotion of the Petitioner to grade S-II had been antedated to 1st July, 1981, however, for the next promotion to the grade S-III he would have become eligible only on 1st

July, 1986, but in the meanwhile the assessment scheme for promotion to the next grade S-III had ceased to operate with effect from 1st January, 1986 consequent to the introduction of UGC pay package. The Tribunal also distinguished the case of the Petitioner with the case of Dr. R.L. Sharma, in whose case there was no assessment in contradistinction to the case of Dr. M.L. Lodha, relied on by the Petitioner.

9. The Tribunal also distinguished the case of Dr. P.G. Nair, whose appointment in Grade II was of 1st July, 1983, however, pursuant to the recommendations of the High Power Committee in Dr. M.L. Lodha (Supra) it was antedated to 1st July, 1977. Since Dr. P.G. Nair had completed five years prior to 1st January, 1986 when the scheme was modified, therefore, Dr. P.G. Nair was placed in grade S-III, however, the Petitioner could not be placed in grade S-III as he had completed five years in grade II only on 1st July, 1986, however prior to that date the scheme had been modified on 1st January, 1986. The Tribunal also held that in Dr. R.L. Sharma's case since no assessment was done, therefore, a direction for assessment was given, however, in case of the Petitioner, pursuant to the directions in Dr. M.L. Lodha's case, the High Power Committee had made the recommendations and the antedation was done, therefore, the Petitioner is not entitled for the relief claimed by him and he cannot be allowed grade S-III as the scheme had been modified on 1st January, 1986, before the Petitioner had become eligible for grade S-III. The Tribunal held that under the service rules framed by the Respondent, Indian Council for Agricultural Research, which is a society, the Petitioner did not have a vested right to be promoted under the old scheme and that the Respondent could give retrospective effect to the amendment regarding promotion policy, which had been revised in 1991 to apply retrospectively from 1st January, 1986.

10. The order of the Tribunal has been challenged by the Petitioner in the present writ petition raising similar pleas and contentions which were raised before the Tribunal. The Petitioner also alleged that the High Power Committee did not follow the directions given in T. No. 8/1990 titled as "Dr. M.L. Lodha and Ors. v. Union of India and Ors." by its order dated 28th January, 1992. The Petitioner again made the grievance that Dr. Nair and Ors. who were appointed to grade S-II, either with him or after him, had been placed in grade S-III, however, he had been denied grade S-III on the ground that the policy had changed retrospectively from 1st January, 1986. A chart was filed by the Petitioner giving the instances of Dr. V.N. Bachhil who was placed in grade S-II on 1st July, 1982, Dr. S.K. Kaushish who was placed in S-II on 1st July, 1981/82, Dr. M.H. Khan who had been placed in Grade S-II on 1st July, 1981 and Dr. P.G. Nair who had been placed in the said grade on 1st January, 1983 and he had been placed in grade S-II on 1st July, 1982. In the circumstances, the Petitioner's grievance was that Dr. V.N. Bachhil and Dr. P.G. Nair had been placed in Grade S-II either with him or after him and they had been promoted to Grade S-III, however, the Petitioner was not.

11. A reply was filed on behalf of the Respondents, dated 31st October, 2001 contending, inter-alia, that there is no illegality, irregularity or any such perversity in the order of the Tribunal which would require any interference by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The Respondents also contended that the petition is barred by limitation as the Petitioner is seeking the relief on the basis of the order passed in 1992 by filing the original application in 1994. Regarding the Petitioner, it was categorically asserted that his promotion to S-II grade was also antedated from 1st July, 1982 to 1st July, 1981 which has not been challenged by him or impugned in any manner. With the antedated promotion to Grade S-II from 1st July, 1981, he completes five years only on 1st July, 1986 to be eligible for promotion to the next grade of S-III. However, the promotion policy was revised retrospectively with effect from 1st January, 1986 and consequently on 1st July, 1986 when the Petitioner had become eligible for promotion to grade S-III, the same policy was not in existence and, therefore, the Petitioner could not be placed in the grade S-III. The Respondents also relied on the judgment of the Supreme Court in the case of I.C.A.R. Vs. Satish Kumar and Another, , holding that the position of statutory rule is different from the service rules framed by a society. It was further contended that the Respondent could revise in 1991 the promotion policy retrospectively from 1st January, 1986.

12. This Court has heard the learned Counsel for the parties and has also perused the writ petition and copies of the pleadings and documents which were before the Tribunal, which have been filed along with the writ petition. The learned Counsel for the Petitioner has not disputed that pursuant to the recommendations of the High Power Committee constituted after the judgment in M.L. Lodha's case (supra), the date of grant of Grade S-II was antedated and in case of the Petitioner it was antedated from 1st July, 1982 to 1st July, 1981. From the illustrations given by the Petitioner, it is apparent that the grant of grade S-II was antedated in case of Dr. P.G. Nair from 1st January, 1983 to 1st July, 1977; from 1st July, 1981 to 1st July, 1976 in case of Mr. M.H. Khan; From 1st July, 1981/82 to 1st July, 1976 in case of Dr. S.K. Kaushish and from 1st July, 1982 to 1st July, 1976 in case of Dr. V.N. Bachhil. The Petitioner could not have any grievance in the cases of Dr. S.K. Kaushish and Mr. M.H. Khan as they were given grade S-II before the S-II grade was given to the Petitioner. The Petitioner has not given any cogent ground against antedating of Grade S-II of other scientists. Dr. V.N. Bachhil was given the S-II grade on the same date on which the Petitioner was given the said grade and Dr. P.G. Nair was given grade S-II after the grade S-II was given to the Petitioner.

13. From the perusal of the original application and the writ petition it is apparent that antedating the grant of S-II grade in case of all these persons has not been challenged by the Petitioner. Grant of S-II grade to Dr. P.G. Nair from 1st July, 1983 was antedated to 1st July, 1977 and in accordance with the rules he became eligible for promotion to grade S-III on 1st January, 1983. Even the other employees referred to by the Petitioner became eligible for promotion to

Grade S-III prior to 1st January, 1986. In the circumstances, the Petitioner cannot make any grievance about grade S-III being given to all these employees.

14. Though it has not been pleaded on behalf of the Petitioner that grant of S-II grade has been antedated in his case only by one year, whereas, in other cases the date has been antedated by a number of years wrongly, however, the learned Counsel for the Respondents has stated that the reason for this is that the Petitioner had failed in a number of attempts and could not qualify to get the grade in contradistinction to others who had qualified much earlier. For various other reasons, the S-II grade was not granted to them which had led to earlier litigations. However, since the Petitioner has not made a grievance about antedating his grade S-II only by one year, this Court will not go into this question in this writ petition.

15. The learned Counsel for the Petitioner, on instruction, has also stated that the Petitioner does not challenge the grant of S-II grade to the Petitioner from 1st July, 1982. If that be so, then the Petitioner would have become eligible for promotion to grade S-III after completing 5 years of service in grade S-II and, therefore, he would have been eligible only on 1st July, 1986 and not before that date.

16. This has not been disputed by the counsel that the scheme for promotion had been reversed in 1991 retrospectively from 1st January, 1986. Under the new Career Advancement Scheme which came into effect by office memorandum dated 28th October, 1991 with retrospective effect from 1st January, 1986, the earlier scheme of assessment, recruitment etc stood modified. Modified Career Advancement Scheme contemplated a scientist S-I on completion of 12 years becoming entitled to S-II grade in the revised pay scale and similarly the terms and conditions for scientist S-III grade were also revised.

17. In the circumstances, the question which requires consideration is whether the Petitioner had acquired a vested right for promotion under the old scheme and his case should have been considered for placing him in the higher grade of scientists on or after 1st July, 1986 after he had completed 5 years as scientist S-II with effect from 1st July, 1981.

18. Similar issue was raised in respect of one scientist who was appointed in the grade S-I in 1982 and on completion of 5 years service he claimed that he became due for grant of higher grade of scientist S-II on a five yearly assessment scheme and his vested right could not be taken away retrospectively by the scheme which came into effect by office memorandum dated 28th October, 1991 with retrospective effect from 1st January, 1986. The Supreme Court in ICAR v. Satish Kumar and Ors. (Supra) had held that though the service rules could not be given retrospective operation by mere executive instructions, however, the Respondent Indian Council for Agricultural Research is not governed by statutory rules as it is a body which frames rules laying down condition of service of its employees and rules framed by a society are not statutory rules

and they can be amended by a resolution of a competent body and any legislation for framing of rules under Article 309 of the Constitution is not required. Since the rules effective from 1st January, 1986 had been applied without any discrimination to all the scientists, it was held that the action of the Respondent No. 1 could not be termed to be unreasonable, arbitrary or irrational and could not be held to be violative of Article 14 and 16 of the Constitution. The Supreme Court in para 15 of ICAR v. Satish Kumar and Ors. (Supra) at page 228 had held as under:

We do not think the law laid by this Court in two judgments, relied by the Respondent, in any way helps his case. In both the judgments the employees were civil servants governed by statutory rules either framed by the Legislature or under Article 309 of the Constitution. By amending the provision of law retrospective operation could be given to the Rules. However, retrospective operation of service rules could not be given by mere executive instructions. In the present case before us the Respondent is not governed by any statutory rules. Here it is the competent body of the Appellant which frames rules laying down conditions of service of its employees. Rules framed by the Society are not statutory rules and they can be amended by a resolution of the competent body and any legislation or framing of rules under Article 309 of the Constitution is not required. Scientists of the Appellant had been agitating for grant of UGC pay-scales. When a decision was taken on the basis of reports of the various committees and in consultation with the Ministry of Finance and UGC scales of pay were granted from January 1, 1986 the challenge to such decision could not be entertained. Moreover, no question of promotion as such is involved. Any Scientist of S-1 grade having 12 years" service could go to the next higher grade irrespective of the fact that if there is any vacancy in the higher grade or not. of course, he cannot pick up the higher grade merely on completion of 12 years" service and his work had to be assessed. It is also not the case of the Respondent that any Scientist has been treated differently than him after January 1, 1986. To all the Scientists amended rules effective from January 1, 1986 had been applied without any discrimination. Scientists including the Respondent are now in a much better position. It cannot be said that action of the Appellant has been in any way unreasonable, arbitrary or irrational for Respondent to challenge the same as violative of Articles 14 and 16 of the Constitution.

19. In the circumstances, the Petitioner could not claim that he should have been promoted as scientist S-III on completion of five years from 1st July, 1981 as the scheme stood modified from 1st January, 1986 prior to the Petitioner completing his five years and becoming eligible for promotion to scientist S-III.

20. The learned Counsel for the Petitioner has also not been able to canvass any cogent grounds successfully impugning the decision of the Tribunal. The learned Counsel is also unable to point out any illegality, irregularity or such perversity in the order of the Tribunal impugned before us in O.A No. 1332/1994 titled as "Dr.

R.L. Arora v. ICAR through Director General and Anr." which would require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

21. For the foregoing reasons we find no merit in the writ petition. The writ petition is, therefore, dismissed. The parties are however, left to bear their own cost.