
(2011) 04 DEL CK 0179

In the Delhi High Court

Case No : Writ Petition (C) No. 17457 of 2005

Dr. Sahadeva Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 04 DEL CK 0179

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

Bench : Division Bench

**Advocate : Suhail Dutt, Azhar Alam and Sankalp Goswami, for the Appellant;
J.P. Sharma and B.S. Mor, for the Respondent**

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioner has challenged the order dated 16th May, 2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2182 of 2004, titled as "Dr. Sahadeva Singh v. Union of India, through Secretary, Ministry of Agriculture, Krishi Bhavan, New Delhi and Ors." dismissing the OA of the Petitioner claiming seniority to the post of AC (Crops) from a date prior to joining this post on account of getting higher pay scale in the post of AD(WS) and further benefit of pay fixation under FR 22 (1). The Tribunal held that the seniority to the post cannot be granted from a date prior to Petitioner joining the post.

2. Brief facts to comprehend the dispute are that the Petitioner was appointed as a Scientist in the National Research Centre for Weed Sciences (hereinafter referred to as "NRCWS) w.e.f. 11th December, 1989 in the scale of Rs. 2200-75-2800-100-4000/- with the Indian Council for Agricultural Research.

3. Under the ACP Scheme which was adopted by the Indian Council for Agricultural Research, the Petitioner claimed the pay scale of Rs. 3000-100-3500-125-5000/- w.e.f. 11th December, 1994 on completion of 5

years, which was the pay scale of Scientist (Senior Scale).

4. The pay scale of Scientist (Senior Scale) on completion of 5 years was, however, denied to the Petitioner by the DPC held on 12th November, 1995.

5. The Petitioner had also applied through the UPSC for direct recruitment to the post of Assistant Director (Weed Science) [AD(WS)] in the Directorate of Plant Protection, Quarantine & Storage (hereinafter referred to as the "DPPQS") in the scale of Rs. 2200-4000/-. The DPPQS is an Office of the Department of Agriculture & Co-operation (DAC). The Petitioner was selected to the post of AD(WS) with the Directorate of Plant Protection, Quarantine & Storage as a direct recruit and he joined the new post on 22nd May, 1995. While joining the DPPQS, the Petitioner was granted pay protection i.e. pre-revised pay scale of Rs. 2200-4000/-, which scale of pay the Petitioner was drawing in the Indian Council for Agricultural Research where the Petitioner was working in the National Research Centre for Weed Science. On the said post of AD(WS), the Petitioner was made permanent after one year w.e.f. 22nd May, 1996. On the Petitioner becoming permanent in the grade of AD(WS), his lien in the service of the National Research for Weed Science under the Indian Council for Agricultural Research got terminated.

6. Later on, another post of Assistant Commissioner (Crops) AC(C) had been advertised. The Petitioner applied for it and he was recommended by the UPSC for appointment in the pay scale of Rs. 10,000-15,200/- as a direct recruit. The Petitioner was, therefore, appointed to the said post of Assistant Commissioner (Crops) on 29th June, 1999 as a direct recruit on substantive basis. On his appointment to the post of Assistant Commissioner (Crops), the Petitioner was relieved from the post of AD(WS) with the Directorate of Plant Protection, Quarantine & Storage and consequently, his lien to the said post in the said department also stood terminated.

7. Though the Petitioner was appointed to the post of Assistant Commissioner (Crops) as a direct recruit, however, the Petitioner claimed higher pay scale/grade and the benefits of the past service despite the fact that the appointment to the post of Assistant Commissioner (Crops) had been made as a direct recruit through the UPSC.

8. When the Petitioner was working as a Scientist in the National Research Centre for Weed Science under the Indian Council for Agricultural Research, as per the Advance Career Progression Scheme, he became entitled for the scale of Scientist (Senior Scale) on completion of 5 years, which was denied to him by the DPC held on 12th November, 1995. However, a subsequent DPC held during 1996 recommended the grant of higher pay scale of Rs. 3000-5000/- to the Petitioner w.e.f. 11th December, 1995. However, the Petitioner was not satisfied with the grant of pay scale of Rs. 3000-5000/- under the ACP scheme w.e.f. 11th December, 1995 and therefore, he filed an OA before the Central Administrative Tribunal, Principle Bench, New Delhi, being OA No. 850/1999, which was decided

by the Tribunal on 3rd May, 2000 holding that the Petitioner is entitled to the benefit under the ACP scheme from 11th December, 1994 with all consequential benefits and not from 11th December, 1995 as had been granted to him. Pursuant to the order of the Tribunal dated 3rd May, 2000, the Indian Council for Agricultural Research, the previous employer of the Petitioner, sanctioned a higher grade of Rs. 3000-5000/- w.e.f. 11th December, 1994.

9. The Department of Agriculture & Co-operation (DAC), however passed an order dated 4th December, 2001 and the pay of the Petitioner was fixed @ Rs. 3000/- w.e.f. 22nd May, 1995 in the pay scale of Rs. 2200-4000/- and @ Rs. 9100/- in the revised pay scale of Rs. 8000-13,500/- w.e.f. 1st January, 1996. Aggrieved by the order dated 4th December, 2001, the Petitioner filed CP No. 611/2001 alleging non-compliance of the Tribunal's order dated 3rd May, 2000 by the Ministry. The Tribunal after hearing the parties, gave one months time to the Respondents to comply with its order. Against the said order, the Respondents filed a writ petition being CWP No. 248/2002 which was, however, dismissed.

10. The Respondents thereafter filed an affidavit of compliance before the Central Administrative Tribunal and by order dated 28th January, 2002 the contempt petition was dismissed holding that no contempt had been made out.

11. The order dated 28th January, 2002 was challenged by the Petitioner by filing another writ petition, being CWP No. 1668/2002. The writ petition bearing No. CWP No. 1668/2002 was disposed of by order dated 9th August, 2002 holding that the order dated 28th January, 2002 of the Tribunal dismissing the proceeding under the Contempt of Courts Act was liable to be set aside. Therefore, the High Court set aside the said order dated 28th January, 2002 and revived the contempt proceeding initiated by the Petitioner before the Central Administrative Tribunal. The High Court had held that the Petitioner was to be placed in the revised scale of Rs. 3000-5000/- w.e.f. 11th December, 1994 and thereafter in the pay scale of Rs. 10,000-15,200/- instead of that, the Petitioner's pay was fixed at Rs. 3000/- in the scale of Rs. 2200-4000/- w.e.f. 22nd May, 1995 and @ Rs. 9100/- in the pay scale of Rs. 8000-13500/- w.e.f. 1st January, 1996.

12. As the contempt petition, pursuant to order of the High Court dated 9th August, 2002 in CWP No. 1668/2002, was revived before the Central Administrative Tribunal, the Respondents were directed to file a fresh affidavit. Thereafter, the Tribunal passed the order dated 10th April, 2003 and dismissed the Contempt petition. The Tribunal noted that the OA No. 850/1999 filed by the Petitioner was disposed of by order dated 3rd May, 2000 to grant the higher pay scale with all consequential benefits w.e.f. 11th December, 1994. Though the previous employer of the Petitioner, the National Research Centre for Weed Science, had placed him in the higher scale of Rs. 3000-5000/- corresponding to the pre-revised scale of Rs. 10,000-15200/- w.e.f. 11th December, 1994, however, the Ministry of Agriculture where the Petitioner was appointed to the

new post of AD(WS) as a Direct Recruit in the Directorate of Plant Protection, Quarantine & Storage, therefore had re-fixed his pay @ Rs. 3000/- in the scale of Rs. 2200-4000/- w.e.f. 22nd May, 1995 and @ Rs. 9100/- in the scale of Rs. 8000-13500/- w.e.f. 1st January, 1996. While dismissing the contempt petition, the Tribunal also held that no contumacious willful disobedience of the Tribunal's order had taken place.

13. Consequent to these proceedings, Ministry of Agriculture also re-fixed the pay of the Petitioner on 1st October, 2002 and thereafter on 6th November, 2002 and also paid arrears amounting to Rs. 1,01,778/-. The Petitioner, however, claimed that he is also entitled for consequential benefits which would include his further promotion to the next higher scale of Rs. 12000-18300/- w.e.f. 12th December, 1998 as his final absorption in the Ministry took place on 5th October, 1999.

14. It was also noted that the order dated 9th August, 2002 passed by the High Court in CWP No. 1668 /2002 had held that the Indian Council for Agricultural Research had complied with the directions of the Tribunal but the Government of India, Ministry of Agriculture had not complied with the said order, consequent to which the orders dated 20th September, 2002 and 6th November, 2002 were passed and the Petitioner was given arrears of pay and allowances. It was also held that in the contempt proceedings the Petitioner would not be entitled to enlarge the scope of relief claimed by him in OA and the writ petition. In the order dated 10th April, 2003 while dismissing the contempt proceeding on compliance of the order of the Tribunal in para 10 it was held as under:

10. ...contempt proceedings shall not be permitted to be utilized for extending the scope of reliefs to be claimed. That is exactly what the applicant is seeking to do. Delhi High Court had held that the contempt in this CP subsisted as long as the applicant's pay was not fixed in the scales of Rs. 3000-5000 and in Rs. 10000-15200. Once the same has been done first by the ICAR and thereafter by the Ministry of Agriculture nothing survives. Request by the applicant that he should have been granted next higher scale on 11.12.1999 in ICAR, keeping in mind the fact that he was finally absorbed in the Ministry only 1999 (though w.e.f. 22.5.1996) is a totally new plea and the same cannot be entertained while considering this CP. The applicant expect the Tribunal to extend the scope of contempt action to give him any further relief than what has already been granted by the Tribunal earlier, the non-compliance of which he seeks to assail if at all he feels that he has a case and that some more relief was called for, he should take action on the original side, in accordance with law, if so advised.

15. Thereafter, the Petitioner filed an OA, being OA No. 2128 of 2004, titled "Dr. Sahadeva Singh v. Union of India and Ors." praying, inter-alia, that Ministry of Agriculture should carry out corrections in the seniority list of Petitioner and should give him seniority w.e.f. 22nd May, 1995 instead of 29th June, 1999, i.e. from the date he had been placed in the scale of Rs. 3000-5000 (revised pay scale of Rs. 10,000-152000/-) and also to give him promotion w.e.f. 22nd May,

2000 in the next higher grade to the post of Deputy Commissioner. It was contended that on fixing his seniority w.e.f. 22nd May, 1995 in the scale of Rs. 10,000-152000/-, though he joined the post of AC(C) as a direct recruit in the scale of Rs. 10,000-15200/- w.e.f. 29th June, 1999, he would be entitled for the benefit of his past services with the National Research Centre for Weed Science and his services with the Directorate of Plant Protection, Quarantine & Storage. He contended that he is entitled for seniority from 22nd May, 1995, the date from which he has been granted the benefit of pay scale, and not from the date of his joining the post as a fresh direct recruit. For this plea, the Petitioner again relied on the order passed by the Tribunal in OA No. 850/1999 dated 3rd May, 2000 and emphasis was laid on the Tribunal granting all consequential benefits in the said order.

16. The petition was contested by the Respondents contending that the Recruitment Rules and Cadre of National Research Centre for Weed Science, the Directorate of Plant Protection, Quarantine & Storage and Department of Agriculture & Co-operation are totally different and distinct and the benefits with regard to pay scale and seniority of previous service cannot be carried forward to different cadres and different service after appointment as a direct recruit. It was asserted that while complying with the order of the Tribunal in OA No. 850/1999, the pay scale of Rs. 3000-5000/- was allowed to the Petitioner and his pay was re-fixed @ Rs. 3000/- per month with effect from 22.5.1995 and Rs. 10,000 per month with effect from 1.1.1996 by order dated 1.10.2002, even though the post of Assistant Director held by him in DPPQS remained in the lower grade. As a sequel to this, the Petitioner's pay was also re-fixed in the pay scale of the post of Assistant Commissioner (Crops) with effect from 29.6.1999 @ Rs. 11330 under the provisions of FR-22 (i) after taking into account his pay in the previous post vide order No. 19011/391/2002-E.V (Vol. I) dated 6.11.2002.

17. It was categorically asserted by the Respondents that the pay protection given to an employee does not entitle him for counting seniority of previous cadre posts for another post the subsequent cadre. Consequently, it was asserted that the Petitioner is not entitled for seniority from 22nd May, 1995 instead of 29th June, 1999 in the grade of Assistant Commissioner (Crops) and further promotion with effect from 22nd May, 2000.

18. The Respondents relied on the guidelines of the Department of Personnel & Training contemplating that seniority of a person regularly appointed to a post/service according to the rule is determined by the order of the merit indicated at the time of initial appointment, and, thus, it has to be counted from the date of his appointment to such grade/service/cadre.

19. The Respondents denied that the Petitioner is entitled for seniority in the grade of Assistant Commissioner (Crops) w.e.f. 22nd May, 1995, which is the date of his appointment as Assistant Director (Weed Science) in the Directorate of Plant Protection, Quarantine & Storage, Faridabad, as it was a separate service/cadre for technical post. According to the Respondents, on Petitioner's

appointment to the post of Assistant Commissioner (Crops) he got detached from the service/post in the Directorate of Plant Protection, Quarantine & Storage. The appointment to the post of Assistant Director (Weed Science) and Assistant Commissioner (Crops) are distinct which are regulated by different sets of recruitment rules. Merely because the Petitioner was allowed upgraded pay scale of Rs. 10,000-15200 in his previous post of Assistant Director (Weed Science), in order to implement the order of the Tribunal in OA No. 850/1999, the Petitioner cannot be permitted to have seniority from the date prior to his appointment to a different post of Assistant Commissioner (Crops) in a different cadre which has separate existence from the earlier post of Assistant Director (Weed Sciences). It was pleaded that the seniority in the grade of Assistant Commissioner (Crops) is to be counted from the date of his appointment, i.e., 29th June, 1999, and not from any previous date. In the circumstances, it was contended that the claim of the Petitioner was misconceived, misleading and an attempt to misrepresent the fact with the mala fide intention to get the benefits which are not permissible under normal rules and circumstances.

20. The Tribunal noted the pleas and contentions of the parties and held that there is no rule or instruction which states that if an employee has been selected as a direct recruit against a post advertised by the UPSC, he would be entitled to the benefit of service/seniority in the post held by him in the previous cadre. On account of protection of pay in the scale of Rs. 10,000-15200 to the post of Assistant Director (Weed Sciences), the Petitioner cannot claim seniority in the newly appointed post of Assistant Commissioner (Crops) from the earlier date. It was held that the claim of the Petitioner is totally unreasonable and not at all tenable. The observations and inferences drawn by the Tribunal made in para 9 of the order which is impugned in the present writ petition is as under:

9. We find that the applicant has mainly relied on the order dated 3.5.2000 in OA No. 850 of 1999 by contending that Respondent No. 1 has not complied with the said order in its true spirit. This, in our view, is not correct inasmuch as he had earlier filed CP in the matter which had been dismissed by the Tribunal but when the applicant had approached the High Court, CP had been revived culminating in order dated 10.4.2003 passed by the Tribunal after thoroughly analyzing the relief sought by the applicant earlier and compliance thereof furnished by the Respondents. Learned Counsel for the applicant has not been able to show any rule or instructions which state that if an employee has been selected as a direct recruit against a post advertised by the UPSC, he would be entitled to the benefit of service/seniority in the post held by him in the previous organization. The basis on which seniority is being claimed in the post of AC(c) is that applicant was given protection of pay in the scale of Rs. 10000-15200 in the post of AD (WS) in the previous organization. Just because he was given pay scale in the post of AD(WS) which is at par with that of AC(c) in compliance of the order of the Tribunal, in our view, would not ipso facto confer on him vested right to claim seniority in the newly appointed post of AC(c) from the earlier date. The claim of the applicant is therefore, totally unreasonable and not at all tenable. In fact, by

resorting to a series of litigation, the applicant has succeeded in getting the benefit of higher pay scale in the post of AD(WS) and further benefit of pay fixation under FR22(1). He is under the mistaken belief that he would invoke the powers of the Tribunal to accelerate his career prospect by claiming seniority in the post of AD(c) from a date prior to his joining the post, which is nothing but an attempt to mislead the Tribunal and derive undeserved and unlawful benefit. This attitude on part of the applicant is to be deprecated.

21. The Petitioner has filed the present writ petition impugning the order of the Tribunal dated 16th May, 2005 contending that the order of the Tribunal dated 3rd May, 2000 passed in OA No. 850 of 1999 has not been complied with and reiterating the pleas and contentions raised before the Tribunal. According to him, though he was appointed on 29th June, 1999 as a direct recruit against the post advertised by the UPSC, however, he would be entitled to the benefit on account of revision of his pay in the previous post in a different cadre as qualifying service, as in the previous post in different cadre he had been granted the same pay scale. It was contended that therefore the seniority should be accepted from the date of his appointment i.e. 22nd May, 1995 in the previous post in different cadre. Seniority from the back date is claimed by the Petitioner on the ground that he was given higher pay scale against the lower post of Assistant Director (Weed Science) which is at par with that of the Assistant Commissioner (Crops) in compliance of the order of the Tribunal. The Petitioner also asserted that the post of Deputy Commissioner (Crops) was lying vacant since 1999 and it was mentioned that a candidate recommended by the UPSC would be given an offer of appointment who is yet to join as the other three posts were to be filled after revision of the recruitment rules. According to the Petitioner, Respondent No. 1 had failed to comply with the order of the High Court dated 9th August, 2002 upholding the Tribunal's orders dated 3rd May, 2000 and 12th December, 2001 and he is entitled for seniority from the date prior to his appointment in compliance with the earlier order of the Tribunal. The Petitioner also claimed the promotion to the next higher grade w.e.f. 22nd May, 2000 under the relief of consequential benefits granted to the Petitioner in respect of his service as a scientist in the National Research Centre for Weed Science with the Indian Council for Agricultural Research.

22. The writ petition has been contested by the Respondent No. 1 who filed a counter affidavit dated 10th July, 2006. The pleas and contentions raised on behalf of Respondent No. 1 before the Central Administrative Tribunal were reiterated stating that the pay protection given to the Petitioner does not entitle him for counting seniority of previous cadre/posts in the subsequent cadre/post. The Petitioner was appointed as Assistant Commissioner (Crops) w.e.f. 29th June, 1999 as a direct recruit and was made substantive in the grade w.e.f. 29th June, 2000 and thus, the lien of the Petitioner on his previous post of Assistant Director (Weed Science) was terminated and on account of any relief granted for the post of Assistant Director (Weed Sciences) as a consequential relief, the Petitioner cannot claim seniority from the date prior to his joining in a different

cadre/post. Respondent No. 1 emphasized that the Tribunal while passing its order dated 10th April, 2003 in the contempt petition No. 611 of 2001 in OA No. 850 of 1999 had held that the Respondents had given full effect to the directions of the Tribunal's order dated 3rd May, 2000 in OA No. 850 of 1999. Therefore, as the contempt petition had been dismissed on account of compliance of order dated 3rd May, 2000, the Petitioner cannot claim any further relief under the order dated 3rd May, 2000 passed in OA No. 850 of 1999 and as the seniority in the grade of Assistant Commissioner (Corps) is not covered under the consequential benefit given by the Tribunal for the previous post of AD (WS) in a different cadre.

23. This Court has heard the learned Counsel for the parties in detail and has also perused the pleadings of OA No. 850 of 1999 and contempt petition No. 611 of 2001 and the orders passed in the said petitions and the order passed in the writ petitions filed by the parties from the orders arising there from, as well as the order of the Tribunal which is impugned before this Court.

24. The learned Counsel for the Petitioner has not been able to refute that the post of Assistant Director (Weed Science) in the Directorate of Plant Protection, Quarantine & Storage, Faridabad is in a distinct cadre than the post of Assistant Commissioner (Crops). Both the posts have different recruitment rules. Both the posts have different duties and responsibilities. The Petitioner has not been promoted from the post of Assistant Director (Weed Science) in DPPQS, Faridabad to the post of Assistant Commissioner (Crops). The appointment of the Petitioner to the post of Assistant Commissioner (Crops) is on account of his direct recruitment through the UPSC. Since the Petitioner has been appointed to the post of Assistant Commissioner (Crops) by direct recruitment, seniority would be regulated by the order of merit indicated at the time of his appointment and it is to be counted from the date of his appointment. No rule or guidelines or office memorandam have been brought to our notice which will entail to the Petitioner, the seniority of another cadre/post which is distinct and different from the post of Assistant Commissioner (Crops) to which the Petitioner was appointed on 29th June, 1999. How the Petitioner can claim seniority legally and validly from 22nd May, 1995 has not been specifically explained.

25. The learned Senior Counsel, Mr. Suhail Dutt has tried to rely on FR 23 in order to substantiate his arguments. FR 23 contemplates that the holder of a post whose pay is changed shall be treated as if he is transferred to a new post on the new pay. FR 23 is as under:

F.R. 23- The holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay;

Provided that he may at his option retain his old pay until the date on which he has earned his next or any subsequent increment or old scale or until he vacates his post or ceases to draw pay on that time scale. The option once exercised is final.

26. Apparently FR 23 relied on by the learned Counsel is not applicable to two posts in different cadres where the appointment is made through the UPSC as direct recruit. The lien of the Petitioner to the post of Assistant Director (Weed Science) got terminated on his joining the post of Assistant Commissioner (Crops) as a direct recruit on 29th June, 1999. Thus, any pay protection granted to the Petitioner while he was on the post of Assistant Director (Weed Science) cannot be construed so as to also grant seniority to the Petitioner for a post in a different grade where the appointment was made as a direct recruit. Thus, there are no grounds to hold either on the basis of any recruitment rules or any office memorandum or guidelines that on joining the post of Assistant Commissioner (Crops) as a direct recruit, the Petitioner shall be entitled to his seniority of appointment on a different post in a different cadre i.e. as Assistant Director (Weed Science) w.e.f. 22nd May, 1995. The Petitioner cannot be given seniority on any of the grounds, from the date prior to his joining the said post of Assistant Commissioner (Crops) from 29th June, 1999 where he was appointed on substantive basis w.e.f. 29th June, 2000.

27. In the entirety of the facts and circumstances, the learned Counsel for the Petitioner is unable to make out any illegality or any un-sustainability in the order of the Tribunal dated 16th May, 2005 which would require correction or interference in any manner by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and it is therefore, dismissed. The parties are, however, left to bear their own costs.