
(1992) 04 CAL CK 0030
In the Calcutta High Court
Case No : Civil Order No. 6223 (W) of 1991

Guna Nand Khan

APPELLANT

Vs

Indian Institute of Technology

RESPONDENT

Date of Decision : 15-04-1992

Acts Referred:

Citation : (1992) 1 ILR (Cal) 405

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Advocate : S.N. Chowhury, Amaresh Chakravorty and Bulu Chatterjee, for the Appellant; Malay Kumar Basil and B.J. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—The present writ petition was moved on behalf of Guna Nand Khan and three others, inter alia, praying for issue of writ in the nature of mandamus commanding the Respondents to act in accordance with law and to grant pay scale of Rs. 330-480 with effect from August 2, 1980, or from the date of joining of the Petitioners Nos. 1 to 3 in service in terms of approval (Serial No. 12) made by the 72nd Board of Governors' meeting of the institution held on August 2, 1980 (as per Annex. A), which had been duly implemented by the Institute authorities in case of Mr. Tapan Kumar Sarkar, a Field Officer, by appointing him in the prescribed pay scale of Rs. 330-480 (as per Annex. B to the petition).

2. In the present writ petition, the writ Petitioners had also prayed for writ in the nature of mandamus commanding the Respondents to upgrade the Petitioners as "Senior Field Assistant" (equivalent to Senior Mechanic) and to place them in the pay scale of Rs. 350-560 with retrospective effect from July 1, 1982, in pursuance of the cadre rationalisation approved by the 79th "Board of Governors" meeting (Serial No. 10) held on December 20/21, 1982 (as per Annex. D to the writ petition), having been duly recommended by a High Level Committee (as per Annex. H) in favour of the Petitioners and duly agreed by the

Respondent No. 1, the Director I.I.T. Kharagpur, and for other incidental reliefs.

3. The writ petition was moved before Kalyanmoy Ganguli J. on May 14, 1991, when direction for affidavits was passed.

4. Thereafter, the writ petition came up before me on November 26, 1991, and the matter was heard in-part.

5. The short facts stated in the instant writ petition are as follows:

On April 15, 1982, Petitioners Nos. 1 and 2 were appointed as Field Assistants. Petitioner No. 3 was also appointed as a Field Assistant on April 17, 1982. The Petitioner No. 4 was appointed as Field Assistant and joined on April 5, 1984. All the Petitioners were offered a pay scale of Rs. 260 which appear from Annexs. C and C/I at pp. 32 and 33 of the writ petition.

6. Further, it is the case of the writ Petitioner that prior to the 79th Board of Governors meeting dated December 20/21, 1982, and in conformity with the decision passed in the 72nd meeting dated August 2, 1980, there were three categories of Field Assistants:

1. Senior Field Assistants in the pay scale of Rs. 380-560;

2. Field Assistant in the pay scale of Rs. 330-480;

3. Junior Field Assistant in the pay scale of Rs. 260-350. The three divisions of Field Assistants with its corresponding pay scale were similar to the three divisions of Mechanics with the corresponding pay scale. In other words, Mechanics Grade A and Senior Field Assistants, Mechanic Grade B and Field Assistants and Mcchailic Grade C and Junior Field Assistant were in the same category and pay scale.

7. In the 79th Board of Governors Meeting of December 20/ 21, 1982, the gradation of Mechanics and Field Assistants were re-classified. Instead of Senior Field Assistants, Field Assistant and Junior Field Assistant, the post of Field Assistant was merged with senior Field Assistant and, therefore, only Senior Field Assistants and Junior Field Assistants remained. Similarly, instead of Mechanics Grade A, Mechanics Grade B and Mechanics Grade C, the post of Mechanics Grade B got merged with Mechanics Grade A and were re-designated as "Senior Mechanics" and Mechanics Grade C were re-designated "Junior Mechanics". The pay scale of Senior Mechanics and Senior Field Assistant was in the grade of Rs. 380-560 while that of the Junior Mechanics and Junior Fieled Assistant were in the grade of Rs. 330-480.

8. Further, according to the writ Petitioners, the persons employed as Mechanics Grade B got the benefit of Senior Machanics, which will, inter alia, appear from pp. 36, 37 and 38 of the writ petition, but no such corresponding benefit was given to the Petitioners.

9. Mr. S.N. Chowdhury, learned Advocate appearing for the writ Petitioners,

submitted that the Petitioners Nos. 1, 2 and 3, when they were appointed in April 1982 as Field Assistants, were arbitrarily offered Rs. 260 as basic pay that was applicable to "Junior Field Assistants", which was contrary to the decision of the Board of Governors Meeting held on August 2, 1980. So far as the Petitioner No. 4 is concerned, he was only offered Rs. 260 as basic pay applicable to "Junior Field Assistant" instead of basic pay of Rs. 380 which was applicable to Senior Field Assistants, as the post of Field Assistants ceased to exist.

10. Mr. Chowdhury further submitted that various oral and written representations were made pointing out the anomaly and clear cut discrimination. Instead of rectifying the mistake and correcting the same, an "office order", dated January 31, 1984, was issued based on the 72nd adjourned meeting of the Board of Governors held on January 9, 1984, in which further error crept in.

11. Since 1984, there was no post of "Field Assistants" but there was post of "Senior Field Assistants" and "Junior Field Assistant", none the less, an order was passed about the pay scale of "Field Assistant", when the said cadre did not exist. In fact, Field Assistant should have been read as "Junior Field Assistant". The said order has been disclosed in p. 13 of the affidavit-in-opposition. The said order is set out below.

Office Order No. Ms/B-1(82)/6/84 Dated 31 January, 1984 I am directed to state that the Board of Governors at its 82nd adjourned meeting held on 9th January, 1984, considered the pay-scale of the following cadres in different schemes:

Junior Mechanic Junior Laboratory Assistant Junior Studio Assistant Junior Dark Room Assistant Field Assistant

Senior Field Investigator Bio-Technician and decided that the scale of Rs. 260-430 be given to above cadres and not Rs. 330-480. This supersedes earlier orders.

Sd/- A.K. Sur 31.1.84

Registrar

Copy to:

- (1) Dean of Sponsored Research and Industrial Consultancy
- (2) Deputy Director
- (3) All Deans
- (4) Heads of Departments/Centres
- (5) Deputy Registrar (P and A)
- (6) Assistant Registrar (Accounts)
- (7) Assistant Registrar (Audit)

(8) Assistant Registrar (Admn.)

(9) Assistant Registrar (Estt.) Copy for information to:

(1) General Secretary, IITEU

(2) General Secretary, IITTA

(3) General Secretary, IITPT

(4) General Secretary, TBAK.

Thus, it will appear from the aforesaid classification that in Item No. 5 the cadre of Field Assistant has been referred to, although the said cadre did not exist at that time, but the cadre of Junior Assistant existed.

12. Mr. Chowdhury further submitted that as a corollary a right has accrued to the "Field Assistant", since August 2, 1980, to get a proper pay scale, when there were three categories of Field Assistant, the said right cannot be taken away.

13. The said impugned order is a mistake so far as Field Assistant is concerned and has been admitted by the Committee that was appointed to look into the anomalies, as will appear from Annex H, p. 44 of the writ petition.

14. The fact of re-organisation of Field Assistants into Senior Field Assistants" and "Junior Field Assistants" is also admitted by the Committee.

15. Mr. Malay Kumar Basu, learned Advocate appearing for the I.I.T., opposed the writ petition by filing affidavit-in-opposition affirmed by Satya Ranjan Das. Assistant Registrar. Salt Lake Extension Centre. I.I.T. Kharagpur, on November 20, 1991.

16. Following relevant statements may be referred to from the said affidavit-in-opposition.

(a) I say that the Petitioners were appointed Field Assistants in the temporary sponsored research schemes in the scale approved by the sponsoring agencies and the Petitioners also accepted the scale of pay in terms of the offer of appointment.

(b) I say that the Institute offered appointment to the Petitioners for the post of Field Assistant in different sponsored schemes, in the scale of Rs. 260-430.

(c) I deny that as per cadre rationalisation in terms of the 79th B.O.G. meeting the post of Field Assistant was upgraded and merged with Senior Field Assistant as Mechanic "B" Grade and was combined with Mechanic Grade "A" as Senior Mechanic, as alleged. I say that the cadre of Field Assistant was not merged with the Senior Assistant as per 79th meeting of the B.O.G. held on 20.12.82.

17. Dealing with the statements made in para. 6 of the writ petition, the deponent stated that the cadre of Field Assistant was not merged with Senior

Field Assistant as per 79 th meeting of Board of Governors held on December 20/21, 1982, but it was decided for the existence of the two cadres, namely. Senior Field Assistant in the scale of Rs. 380-560 (T.P.C.) and Junior Field Assistant in the scale of Rs. 260-430 (T.P.C.).

18. Mr. Chowdhury. in reply, submitted that statements made by the deponent Shri Ranjan Das were incorrect and not supported by the recommendation of the 79th meeting of the Board of Governors held on December 20/21, 1982.

19. According to Mr. Chowdhury. the deponent has made misleading statements in the said affidavit-in-opposition. According to him. the deponent, being the Assistant Registrar of I.I.T., Salt Lake Extension Centre, could not have any personal knowledge of the facts of the instant case. In the affidavit-in-opposition the deponent has tried to make out a different case altogether. It was alleged in the affidavit that the Field Assistants were appointed in the scale approved by the sponsoring agencies, when it is very clear at p. 35 of the writ petition that the scale given by the Sponsoring Agency will only apply to Research Associates, Senior Research Fellow and Junior Research Fellow, and not the Field Assistant.

20. According to Mr. Chowdhury, not only incorrect statements have been made by the deponent, but in para. 7 by denying the fact that the post of Field Assistant got merged with Senior Field Assistant, in tune with the decision of the 79th Board of Governors meeting held on December 20. 1982.

21. This is also contrary to the records, which will be evident from the confidential note disclosed at p. 42 of the writ petition, which is Annex "G" to the writ petition.

22. By the said letter, Guna Nand Khan, the writ Petitioner No. 1 "stated to the Dean. Sponsored Research Industrial Consultancy, as follows:

(i) 1 was appointed as a Field Assistant on 15.4.82 in the scheme "Energy Requirement in Agricultural Sector (ICAR)" operating at Agril. Engg. Department, I.I.T., Kharagpur, in the scale of pay Rs. 260-430.

(ii) the B.O.G. of the Institute in its 72nd meeting held on 2.8.80 approved the scale of pay Rs. 330-480 for Mechanic Gr. "B" and Field Assistants. Both the categories (viz. Gr. "B" and F.A.) were specified to be in one cadre (Ref. 2 and 5).

(iii) The B.O.G. in its meeting held on 20/21.12.82 abolished the posts of Mechanic Gr. "B" and Field Assistant and in lieu thereof both were specified as Senior Mechanic and Senior Field Assistant respectively (Field Assistant cadre was totally merged to Sr. Field Assistant) and a scale of pay Rs. 380-560 was approved and specified to that cadre (Ref. 3).

(iv) In pursuance upon the B.O.G. approval dated 20/21.12.82 all Mechanic Gr. "B" of this Institute were granted and offered new designation of Sr. Mechanic in the approved scale of pay Rs. 330-560 (Ref. 4).

(v) The posts of Field Assistants were upgraded to Sr. Field Assistants in the

scale of pay Rs. 380-560 as in case of Mech. Gr."B" to Sr. Mechanic vide Registrar's letter (Ref. 6) and thus the approval of B.O.G. held on 20/21.12.82 was honoured and implemented in case of Mechanic Gr. "B" as well as also to Field Assistant and the said pay scale" was implemented in case of only two Field Assistants. One of them is Mr. T.K. Sarkar working in the project on "Collector of Natural Resources Data from a Typically Backward and Tribal Area" operating at Geology and Geo-physics Department, I.I.T. Kharagpur. But unfortunately, in spite of being senior to Mr. Sarkar and some other Mechanic Gr. "B" employees of this Institute, I have been deprived of my legitimate financial benefit repeatedly twice for non-implementation of scales of pay Rs. 330-480 and Rs. 380-560 (Ref. 4, 5, 6).

23. By the said letter the writ Petitioner No. 1 also prayed for implementation of pay scale of the Field Assistant in the scale of Rs. 330-480 with retrospective effect from April 15, 1982, in case of the writ Petitioner and to issue an office order for implementation of scale of pay of Rs. 380-560 in his case with appropriate designation of Senior Field Assistant with retrospective effect from July 1, 1982.

24. Thus, on the basis of the aforesaid submissions made on behalf of the respective parties as also the averments made in the writ petition and the affidavit-in-opposition, it has become necessary for this Court to decide whether the Respondents are bound to redesignate the Petitioners as Senior Field Assistants on the basis of the recommendations made under Annx. H, which is set out below:

It appears from records that some anomalies exist in respect of temporary employees of Sponsored Research Schemes as a result of cadre rationalisation approved by BOG in its 79th meeting (20-21.12.82)."As a result of this rationalisation position of Mechanic "A" and "B" were combined and redesignated as Senior Mechanic (Pay scale Rs. 380-560). Similarly, Sr. Field Assistants and Field Assistants were to be redesignated as Sr. Field Assistant (Pay scale 380-560) and Mechanic "C, Jr. Field Assistant etc. were categorised as Jr. Mechanic and Jr. Field Assistant respectively. Thus the three categories existing before rationalisation were to be rearranged into two categories, viz., Senior and Junior only. While this was done in case of Machanic and others as intended, a mistake was made inadvertantly. The pay scale for Junior cadre was mentioned as Rs. 330-480 instead of 260-430 in the B.O.G. resolution as well as in G.O. issued by Registry. While correcting this error in subsequent B.O.G. maeting yet a different error crept in the B.O.G. resolution. In the Junior cadre list in place of Jr. Field Assistant, Field Assistant was included and Sr. Field Investigator in place of Jr. Field Investigator. This mistake has remained and needs to be corrected. The issue was throughly examined by Dy. Director, Dean (S.R.I.C.) and Registrar in light of representations made by scheme employees to Dean (S.R.I.C.).

It is recommended that the errors mentioned above be corrected and salary etc. be corrected notionally w.e.f. 1.7.82 but financial benefit to the affected

employees may be given only from the date of B.O.G. the approving the correction in modifications of B.O.G.'s earlier decision dated 4.1.88.

25. It appears from Annex. H that the anomalies existed in respect of temporary employees of Sponsored Research Scheme, as a result of cadre rationalisation approved by Board of Governors in its 79th meeting held on December 20/21, 1982, were tried to be clarified. As a result of the said rationalisation, position of Mechanic A and B were combined and redesignated as "Senior Mechanic", in the pay scale of Rs. 380-560 and, similarly, Senior Field Assistants and Field Assistants were to be redesignated as Senior Field Assistant at the pay scale of Rs. 380-560 and Mechanic C, Junior Field Assistant etc., were categorised as Junior Mechanic Field Assistant, respectively.

26. Thus, in my view, as the Respondent I.I.T. has on the basis of the approval of the Board of the Governors 72nd meeting held on August 2, 1980, appointed Mr. Tapan Kumar Sarkar as a Field Assistant in the pay scale of Rs. 330-480, and as such, the writ Petitioners will be entitled to be upgraded by the Respondent and redesignated as Senior Field Assistant which is equivalent to the post of Senior Mechanic and the writ Petitioners are also entitled to be placed in the pay scale of Rs. 380-560 with retrospective effect from July 1, 1982.

27. In the result, the writ petition is entitled to succeed.

28. The Respondents are directed to upgrade and redesignate the Petitioners as "Senior Field Assistant" and to place them in the pay scale of Rs. 380-560 with retrospective effect from July 1, 1982, pursuant to the rationalisation approved by 79th Board of Governors meeting held on December 20/21, 1982, and in accordance with this judgment.

29. Such implementation and upgradation of the Petitioners should be made positively within a period of two months from the date of communication of this judgment.

30. The writ petition is allowed to the extent indicated above.

31. There will be no order as to costs.

32. Let xerox copy of this judgment be supplied to the learned

Advocates of both the parties on their usual undertaking.