
(2015) 11 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 24809-CAT-2015

H.S. Gill

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 11 P&H CK 0042

Hon'ble Judges : Muttaci Jeyapaul and Darshan Singh, JJ.

Bench : Division Bench

Advocate : V.K. Sharma, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Darshan Singh, J.—The present civil writ petition under Articles 226 /227 of the Constitution of India has been filed for issuance of writ of certiorari, quashing the impugned order dated 20.10.2015 (Annexure P-4) passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short "the Tribunal") vide which the Original Application No. 060/01070/2014 has been dismissed and for quashing the impugned order dated 10.11.2014 (Annexure A-1 attached with Annexure P-1) vide which the claim of the petitioner for grant of pay scale of the post of Security Officer has been rejected without considering the principle of "Equal Pay for Equal Work". A writ in the nature of mandamus has also been prayed for commanding the respondents to grant the pay scale of Rs. 10000-15200 w.e.f. 1.2.2002 on the principle of "Equal Pay for Equal Work" and to release the arrears of retiral dues with interest @ 18% per annum.

2. As per averments in the petition, the petitioner joined the service in the Council of Scientific and Industrial Research at Dhanbad (in short "the CSIR") on 4.12.1989 as Senior Security Assistant in the pay scale of Rs. 1640-2900 (pre-revised). He was promoted to the post of Security Officer w.e.f. 4.12.2000 in the pay scale of Rs. 6500-10500 (pre-revised) while posted at CSIR-CIMFR (erstwhile CFRI), Dhanbad. That on the request of the petitioner, he was

transferred to CSIR-CSIO (Central Scientific Instrument Organisation) as Security Officer w.e.f. 1.7.2002. That it was incumbent upon the respondents to grant him the prevalent scale of Rs. 10000-15200 which was prevalent scale for the Security Officer on the Cardinal principle of "Equal Pay for Equal Work" but he was malafidely denied this benefit and was placed in the lower pay scale of Rs. 6500-10500. The petitioner was also designated as Fire Officer and on 29.8.2002, the CSIR-CSIO was declared as "Prohibited Place" which resulted in the increase of his duties and responsibilities as a Security Officer. The petitioner submitted the representation dated 29.8.2011 to the Director General, CSIR to grant him the prevalent pay scale of Rs. 10000-15300 for Security Officer, CSIO, Chandigarh w.e.f. 1.7.2002 on the cardinal principle of "Equal Pay for Equal Work irrespective of qualifications, as granted to the Assistant Manager, Hindi Teachers, Junior Technical Assistants etc. The genuine grievance of the petitioner was not redressed. So, he filed OA No. 133-CH-2012 which was disposed of vide order dated 31.7.2014 directing the respondents to examine all the points raised in the representation. He also submitted the supplementary representation dated 12.8.2014 but the said representations were rejected by the respondents vide impugned order dated 10.11.2014. Thereafter, the petitioner filed OA No. 060/01070/2014. The same has also been dismissed by the learned Tribunal vide impugned order dated 20.10.2015. The said order passed by the Tribunal has been assailed by the petitioner on the grounds that the said order is based on conjectures and surmises. That the learned Tribunal has failed to consider that transfer is also a source of recruitment and the petitioner was appointed/posted by transfer on the post of Security Officer and he could not have been given the lower pay scale than the sanctioned pay scale for the post. That the learned Tribunal has failed to consider that the petitioner had never given in writing to forego the pay and allowances of the post of Security Officer in CSIR-CSIO, Chandigarh. That the Tribunal has wrongly considered the letter dated 24.8.2000 with regard to redesignation of the security staff and the view taken by the Tribunal is totally unfair. Hence, this petition.

3. The written statement filed by the respondents before the learned Tribunal is available on record. The OA filed by the petitioner was contested by the respondents on the ground, inter alia, that the post of Security Officer at CSIO, Chandigarh was created in the pay scale of Rs. 1100-1600 (3rd Central Pay Commission) which was revised to Rs. 3000-4500 in the 4th Central Pay Commission and to Rs. 10000-15200 in the 5th Central Pay Commission and in terms of the sanction, this post was to be filled up amongst the Ex-Army Officers. Captain Surinder Mohan Sharma was selected as a Security Officer for CSIR-CSIO, Chandigarh vide letter dated 7.4.1986. A captain in the Indian Army is a the Commissioned Officer which is five levels higher to the rank of Sergeant which the petitioner was holding in the Air Force. The petitioner was transferred to CSIR-CSIO, Chandigarh, in the same capacity. The scale claimed by him is two levels higher than the pay scale of Rs. 6500-10500 which the petitioner was holding. The transfer in the same capacity does not confer any right whatsoever

to the promotional scale higher by two levels. He was correctly placed in the pay scale to which he was entitled.

4. We have heard Mr. V.K. Sharma, learned counsel for the petitioner and have gone through the file carefully.

5. Learned counsel for the petitioner contended that the petitioner was transferred to CSIR-CSIO, Chandigarh as a Security Officer. This fact is not disputed that the Security Officer of CSIR-CSIO, Chandigarh was getting the pay scale of Rs. 10000-15200 which was the prevalent scale for the post of the Security Officer. The petitioner was also posted to the same post carrying same duties and responsibilities as well as the same rank but he was kept in the lesser pay scale of Rs. 6500-10500 (pre revised). He contended that the predecessor of the petitioner, namely, captain Surinder Mohan Khanna was getting the pay scale of Rs. 10000-15200. So, it was incumbent upon the respondents to grant the same pay scale to the petitioner but he was malafidely kept in the lesser pay scale of Rs. 6500-10500.

6. He further contended that observations of the learned Tribunal that the post of Senior Security Officer is a promotional post in the promotional pay scale, is factually incorrect as it was only a redesignation. He has drawn our attention to the letter dated 25.10.2000 vide which Sh.J.N. Ahuja, Security Officer was re-designated as Senior Security Officer. He further contended that the petitioner was also performing the same duties and responsibilities rather his duties and responsibilities had increased with the respondent-Institute being designated as "Prohibited Place". So, even on the principle of "Equal Pay For Equal Work", the petitioner was entitled to the pay scale of Rs. 10000-15200. Thus, he pleaded that the claim of the petitioner has been wrongly rejected by the respondents vide impugned order dated 10.11.2014 and the learned Tribunal has also wrongly dismissed the original application filed by the petitioner.

7. We have duly considered the aforesaid contentions.

8. This fact is not disputed that prior to the appointment of the petitioner as a Senior Security Assistant in CSIR, Dhanbad, he was serving as a Sergeant in the Indian Air Force which was a noncommissioned Rank. The petitioner was appointed as Senior Security Assistant in the pay scale of Rs. 1640-2900 vide office memorandum dated 27.10.1989 at CSIR (Council of Scientific & Industrial Research). He was promoted to the post of Security Officer in the pay scale of Rs. 6500-200-10500 by the Central Fuel Research Institute, Dhanbad vide office memorandum dated 31.12.2001. Thereafter, he moved the written request for his transfer to the CSIO, Chandigarh in the same capacity which considered and the Director, CSIO accorded the approval for his transfer in the same capacity against the vacant post of Security Officer at CSIO, Chandigarh vide order dated 19.6.2002. In compliance of that order, he assumed the charge of the post of Security Officer, CSIO Chandigarh on 2.7.2002.

9. This fact is not disputed that the petitioner was drawing the pay in the pay

scale Rs. 6500-10500 as a Security Officer at CSIR, Dhanbad and after his transfer at Chandigarh, he has been placed in the same pay scale. The petitioner is claiming the higher pay scale of Rs. 10000-15200 on the grounds that the prevalent pay scale of the post of Security Officer at CSIO, Chandigarh was Rs. 10000-15200 which was being drawn by his predecessor. Secondly, he was entitled to the aforesaid pay scale on the principle of "Equal Pay for Equal Work".

10. It is the admitted case of the petitioner that as Security Officer at CSIR, Dhanbad, he was getting the pay in the pay scale of Rs. 6500-10500. He has been transferred to CSIO, Chandigarh on the basis of his written request vide order dated 19.6.2002 wherein it has been categorically mentioned that the petitioner has been transferred to CSIO, Chandigarh in the same capacity against the vacant post. The same capacity means the same rank, pay scale and perks. The petitioner does not become entitled to the higher pay scale simply on the basis of his transfer to respondent No. 2-Organisation. The petitioner cannot claim the double benefit i.e. the transfer/posting to the place of his choice and then to the higher pay scale. It is evident from the transfer order dated 19.6.2002, that his request for transfer in the same capacity was acceded to against one of the vacant post at Chandigarh. The Director, CSIR had approved the appointments and promotions of the Security Staff in CSIR in the different grades and designations as under vide letter dated 24.8.2000:

11. As per the above letter, the pay scale of Rs. 10000-15200 which the petitioner is claiming, is two levels higher than the pay scale of Rs. 6500-10500 which the petitioner was getting while holding the post of Security Officer at the time of his transfer to CSIO, Chandigarh. Acceptance of the claim of the petitioner will virtually amount to give him the double promotion without complying with the requirements laid down in the rules which will not be legally permissible. The transfer order does not suggest at all that with his transfer, his service conditions will also be changed and he will be entitled to the higher pay scale which was being enjoyed by his previous incumbent. The transfer order clearly indicates that the petitioner was to continue in the same capacity drawing the same emoluments which he was drawing at Dhanbad. So, simply on this ground that the Security Officer originally posted in CSIO, Chandigarh was drawing the higher pay scale does not make the petitioner entitled to claim the same pay scale on his transfer to Chandigarh when the post of the Security Officer on which he was working was getting the pay scale of Rs. 6500-10500.

12. The petitioner will also not be entitled to claim the higher pay scale of Rs. 10000-15200 on the principle of "Equal Pay for Equal Work". This fact has not been disputed that prior to his appointment in CSIR, he was serving as a Sergeant in the Air Force whereas Surinder Mohan Khanna, the Security Officer appointed in CSIR-CSIO, Chandigarh was a Commissioned Army Officer in the rank of Captain. The petitioner was transferred to respondent No. 2-Institute whereas Mr. Khanna was the direct recruit. Thus, they were having the different mode of selection/recruitment. The Hon'ble Apex Court in case S.C. Chandra and

Others Vs. State of Jharkhand and Others, has laid down the following principles while deciding the issue regarding "Equal Pay For Equal Work":

"(i) Fixation of pay scales by Courts by applying the principle of equal pay for equal work upsets the high Constitutional principle of separation of powers between the three organs of the State.

(ii) In recent years Supreme Court avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an expert committee appointed by the Government instead of the Court itself granting higher pay).

(iii) Only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply.

(iv) Equation of posts and salary is a complex matter which should be left to an expert body.

(v) Fixation of pay and determination of parity is a complex matter which is for the executive to discharge.

(vi) Granting of pay parity by the Court may result in a cascading effect and reaction which can have adverse consequences."

13. Thus, only because the nature of work is same irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of "Equal Pay For Equal Work" will not apply. Thus, the petitioner will not be entitled to the higher pay scale on the principle of "Equal Pay for Equal Work".

14. The petitioner is also not entitled to any relief on account of principle of delay and laches. He has been receiving the pay in the pay scale of Rs. 6500-10500 right from his transfer to CSIO, Chandigarh i.e. 2.7.2002. For the first time, he moved the representation on 29.8.2011, so, he kept mum for about 9 years. Thus, the claim of the petitioner is highly belated and stale.

15. Sequel to our aforesaid discussion, the claim of the petitioner with respect to the higher pay scale of Rs. 10000-15200 is not legally permissible. Consequently, we do not find any illegality in the impugned order dated 10.11.2014 passed by the Director General, CSIR and the order dated 20.10.2015 passed by the learned Tribunal. Resultantly, the present writ petition has no merits and the same is hereby dismissed.