

(2018) 04 DEL CK 0272

In the Delhi High Court

Case No : Civil Writ Petition No. 8681 Of 2005, Civil Miscellaneous No. 6511 Of 2005, 10267 Of 2006

J.R.William Singh

APPELLANT

Vs

Institute Of Chartered Accountants

RESPONDENT

Date of Decision : 02-04-2018

Acts Referred:

Citation : (2018) 04 DEL CK 0272

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Tamali Wad, Prince Anthony, Rakesh Aggarwal

Final Decision : Dismissed

Judgement

Sunil Gaur, J

1. Vide office order of 14th February, 2005 (Annexure A-22) petitioner, an Electrician with respondent-Institute was transferred from Noida Office to DCO-Kanpur as an Electrician. In this petition not only quashing of office order (Annexure A-22) but also of order dated 28th April, 2004 (Annexure A-14) is sought. Vide office order of 28th April, 2004 (Annexure A-14), petitioner has been posted at a new location i.e. HRD (NOIDA) from existing location i.e. diary and dispatch at Head Office. According to petitioner, office order of 28th April, 2004 (Annexure A-14) is a demotion order as he claims that vide office order of 20th March, 1996 (Annexure A-11), petitioner was called upon to officiate as Section Officer in diary/dispatch branch of respondent-Institute. It is also the case of petitioner that he had officiated as Section Officer from 20th March, 1996 up to 28th April, 2004 and he was not paid the salary of Section Officer. In this petition, designation and pay scale of Section Officer with effect from 5th March, 1993 is sought under time bound promotion scheme and the arrears accrued are also sought. A direction is also sought to respondent to promote petitioner from Section Officer to Executive Officer with effect from 5th March, 2002 with consequential benefits. To claim the relief as sought in this petition,

petitioner's counsel places reliance upon settlement agreement of 10th January, 1984 (Annexure A-4). Attention of this Court is drawn to office memorandum of 13th March, 1984 (Annexure A-5) to submit that pay scale of UDC was granted to petitioner vide aforesaid office memorandum and again on 8th July, 1986 vide office memorandum (Annexure A-6), pay scale of Assistant was granted to petitioner and so, in light of the settlement agreement (Annexure A-4), petitioner is entitled to the pay scale of Section Officer. Reliance is also placed upon memorandum of settlement of 2nd August, 1988 (Annexure A-7) and another memorandum of settlement of 15th June, 1991 (Annexure A-8) to claim the promotion and the consequential reliefs.

2. In the counter affidavit filed by respondent-Institute, the stand taken is that petitioner was asked to officiate as Section Officer and was never promoted on the said post as such and that the aforesaid memorandum of settlements relied upon by petitioner had authorized the President of the respondent-Institute to frame policy in respect of drivers/electricians etc. and the Policy (Annexure R-1 Colly) has been already put in place way back on 25th February, 1984 in respect of driver/electricians etc. and as per this Policy (Annexure R-1 Colly), petitioner is entitled to time bound rise in pay scale after a period of 12 years and it has been already given to him as per orders (Annexure A-5 & Annexure A-6). So, it is submitted by learned counsel for respondent-Institute that petitioner cannot claim parity with the LDC/UDC/Section Officer etc. as their duties gradually become more onerous whereas duties of driver/electrician etc. remain the same. Thus, dismissal of this petition is sought by learned counsel for respondent.

3. Upon hearing, on perusal of impugned orders and the material on record, I find that there is a sound rationale in the Policy (Annexure R-1 Colly) not to treat petitioner at par with LDC/UDC/Section Officer etc. and there is no effective challenge by petitioner to the aforesaid rationale though in the rejoinder the existence of this policy is denied. In the face of Policy (Annexure R-1 Colly) governing petitioner, no case for time bound promotion is made out. It is evident from the office orders as referred to above that petitioner's designation has been always shown to be that of an electrician although he has been asked to officiate as Section Officer. It is relevant to note that petitioner in his communication of 8th June, 2000 (Annexure-12 Colly) has claimed that while working as Section Officer, he had been performing ministerial work in the diary/dispatch section. Although petitioner had been making request for promotion under the time bound promotion scheme from time to time but no specific request or representation has been made by petitioner to claim the salary of the Section Officer for the period he had officiated as Section Officer. In any case, since petitioner was performing ministerial work as Section Officer, therefore, no case for claiming salary of a Section Officer is made out. This Court is of the considered view that the office order of 28th April, 2004 (Annexure A-14) cannot be construed to be a demotion order as in the said office order, petitioner's designation has been shown to be that of electrician and it would be far fetched to label his relocation as demotion. Since petitioner's relocation vide office order

(Annexure A-14) cannot be said to be demotion, therefore, no fault can be found with the office order of 14th February, 2005 (Annexure A-22) vide which petitioner was transferred.

4. In the face of the Policy (Annexure R-1 Colly) governing petitioner, no reliance can be placed upon memorandum of settlements (Annexure A-4, Annexure A-7 and Annexure A-8) as petitioner's case is not covered by the above said memorandums. It is not in dispute that the President of the respondent-Institute was authorized vide aforesaid memorandums of settlements to frame a policy in respect of electrician/drivers etc. which has been done and in terms of the Policy (Annexure R-1 Colly) governing petitioner, the basic pay of petitioner has been enhanced from time to time vide office memorandums (Annexure A-5 & Annexure A-6).

5. In view of the aforesaid, the reliefs sought in this writ petition cannot be granted. Hence this petition and the applications are accordingly dismissed.