

(2013) 05 GAU CK 0016

In the Gauhati High Court

Case No : Writ Petition No. 2613 of 2010

Mahendra Pratap Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Citation : (2013) 3 GLD 602

Hon'ble Judges : P.K. Musahary, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : M. Chanda, Mr. S. Dutta and Mrs. U. Dutta, for the Appellant; B. Chakraborty, CGC, for the Respondent

Judgement

Iqbal Ahmed Ansari, J.—By making this writ petition under Article 226 of the Constitution of India, the petitioner has put to challenge the order, dated 17.11.2009, passed, in Original Application (in short, "OA") No. 140/2007, by the learned Member, Central Administrative Tribunal, Guwahati Bench (hereinafter referred to as "the learned Tribunal")/whereby the learned Tribunal has dismissed the OA No. 140/2007 and upheld the order, dated 14.03.2007, as well as the order, dated 09.01.2003, which stood impugned before the learned Tribunal, whereby the respondents herein have, in effect, reduced the petitioner's pay scale from Rs. 14,300-18,300/- to Rs. 12,000-16,500/- and also directed recovery of the excess payment, which had been made to the petitioner before the reduction in the petitioner's pay scale was ordered. We have heard Mrs. U. Dutta, learned counsel for the writ petitioner. We have also heard Mr. S. Chakraborty, learned Central Government Counsel, appearing for the respondents.

2. The material facts, which are not in dispute, may, in brief, be set out as under:

(i) The petitioner herein, who holds a degree in Civil Engineering, was appointed, on 19.09.1986, as Assistant Director (Group A), with effect from 29.09.1986, in the Directorate of Training, Central Water Commission, under the Ministry of

Water Resources, Government of India, and he was promoted, on 01.10.1993, to the next higher grade of Deputy Director/Executive Engineer (non-functional Junior Administrative Grade, in short "JAG") in terms of the Central Water Engineering (Group A) Service Rules, 1995 (hereinafter referred to as "the Service Rules, 1995"), which came into effect on and from 02.11.1995. The criteria of eligibility for promotion to the post of JAG (Ordinary Grade) (Superintending Engineer/Director) read as follows :

Officers in the senior time scale with 5 years regular service in the grade and possessing a degree in Engineering (Civil or Mechanical) or equivalent from a recognized University/Institute".

3. In terms of the Service Rules, 1995, the next higher grade for a Deputy Director/Executive Engineer was Director/Superintending Engineer.

4. Following the 5th Central Pay Commission's recommendations, the Ministry of Finance, Government of India, introduced, on 30.09.2007, Central Civil Service (Revised Pay) Rules, 1997, w.e.f. 01.01.1996 and the Government of India issued, in this regard, Office Memorandum (in short, "OM"), on 20.09.1997, wherein the pay scale of Group-A Engineering Service were shown as under:

5. By OM, dated 17.10.1997, Government of India, Ministry of Water Resources, provisionally implemented the revised pay scale of Rs. 14,300-18,300/- in respect of Superintending Engineer/Director of Central Water Engineering (Group A) Services, who had completed 13 years of service in Group "A" as per extent rules. Thereafter, the petitioner was promoted to the post of Director/Superintending Engineer (in the grade of JAG), on ad hoc basis, w.e.f. 11.10.1999, and his pay was provisionally fixed in the scale of Rs. 14,300-18,300/-, i.e., his initial pay having been fixed at Rs. 14,300/- w.e.f. 11.10.1999. The petitioner accordingly started drawing the pay scale of Rs. 14,300-18,300/-. By issuing OM, dated 06.06.2000, Government of India, DOP&T, introduced the following two grades:

(i) The "non-functional" pre-revised pay scale of Rs. 4500-5700 (revised Rs. 14300-18300), applicable to the Superintending Engineers in the Central Public Works Department, was converted into a "functional" grade and promotion in this scale was made permissible only on completion of 13 years of regular service in Group "A".

(ii) The "functional" pre-revised pay scale of Rs. 3700-5000/- (revised Rs. 12000-16500/-), applicable to the Superintending Engineers as the first grade on their promotion from the posts of Executive Engineers was made "non-functional" grade for Executive Engineers in the pre-revised pay scale of Rs. 3000-4500/- (revised Rs. 10000-15200/-).

6. The above mentioned OM, dated 06.06.2000, was followed by another OM, dated 20.12.2000, whereby the OM, dated 06.06.2000, was modified by laying down that in order to be entitled to be put in the "functional grade" Rs.

1,43,000-1,83,000, an incumbent has to put 9 years of regular service in the grade of Executive Engineer.

7. With the issuance of the modified OM, dated 20.12.2000, the problems for the present petitioner commenced inasmuch as an order was issued by the respondents, on 06.06.2001, reducing his pay scale from 14,300-18,300/- to Rs. 12,000-16,500/- and also directing recovery of the excess amount, which, in the meanwhile, the petitioner had received in the pay scale of Rs. 14300-18,300/-.

8. Thereafter, a detailed representation was made by the petitioner, on 02.07.2001, against the reduction of his pay scale and also the recovery of the alleged excess amount, which he had received. In his said representation, the petitioner clearly pointed out that though he was promoted to the grade of Director/Superintending Engineer, on ad hoc basis, w.e.f. 11.10.1999, and his promotion was regularized by holding Departmental Promotion Committee (in short, "DPC"), on 08.06.2001, the fact of the matter remained that posts, in the grade of Director/Superintending Engineer, were lying vacant even on the date of his ad hoc promotion to the grade of Director/Superintending Engineer and that the holding of the DPC was delayed for no fault of the petitioner.

9. In response to the representation, so made, the respondents passed an order, on 14.03.2007, whereby they pointed that, in terms of the modified OM, dated 20.12.2000, aforementioned, a person was required to put in minimum 9 years of regular service in the grade of Executive Engineer in order to receive the pay scale of Rs. 14,300-18300/- on promotion to the grade of Director/Superintending Engineer, but, as the petitioner had not completed the requisite 9 years of regular service in the grade of Executive Engineer, he was not entitled to receive the pay scale of Rs. 14300-18,300/-. With this observation, the petitioner's representation was turned down.

10. It is basically in the above factual background that the petitioner made the OA No. 140/2007, which came to be dismissed by the impugned order, dated 17.11.2009, passed by the learned Tribunal.

11. While considering the present writ petition, it is of paramount importance to note that, in the light of the OM, dated 30.09.1997, aforementioned, the petitioner would have received the pay scale of Rs. 14300-18300/-, but for the modified OM, dated 20.12.2000. However, while dealing with the petitioner's case, what appears to have escaped the attention of the respondents and also of the learned Tribunal is that the validity of the OM, dated 20.12.2000, had been put to challenge in(a writ petition, before this Court. As the writ petition was dismissed, the petitioners preferred an appeal and the appeal came to be concluded by judgment and order, dated 01.04.2009, passed by a Division Bench of this Court, in WA 07/2006, whereby the Division Bench pointed out and held that as far as the OM, dated 20.12.2000, aforementioned was concerned, the same was illegal, because the conditions of service could not have been modified, changed and/or altered by issuance of an Office Memorandum, when

the Service Rules, 1995, were holding the field and that the conditions of service of persons, such as, the present petitioner, were governed by the Service Rules, 1995. With the conclusions, so reached, the Division Bench allowed the appeal and set aside and quashed the OM, dated 20.12.2000, aforementioned. Dissatisfied with the decision of this Court, whereby the OM, dated 20.12.2000, had been set aside, the respondents carried the matter, by way of Special Leave Petition, to the Supreme Court. It is not in dispute before us that the Supreme Court has upheld the conclusion, which had been reached by this Court that the OM, dated 20.12.2000, was not sustainable in law.

12. What surfaces from the above discussion is that the OM, dated 20.12.2000, aforementioned has to be treated as non est in law. The requirement, therefore, of a person having put in 9 years of regular service in the grade of Executive Engineer, in order to enable him to receive pay scale of 14,300-18,300/-, on being promoted to the grade of Director/Superintending Engineer, has become non est and is not enforceable in law. With the OM, dated 20.12.2000, having been held as invalid, the petitioner was, obviously, entitled to receive the pay scale of Rs. 14300-18300/- on his promotion to the grade of Director/Superintending Engineer.

13. The limited question, which, however, remains to be answered, is What would be the effective date of drawing of the pay scale of Rs. 14300-18300/- by the petitioner?

14. While considering the question, posed above, it needs to be noted that the petitioner was promoted, on ad hoc basis, to the grade of Director/Superintending Engineer, in the pay scale of Rs. 14300-18300/-, w.e.f. 11.10.1999. He was, however, regularly promoted to the said grade on 08.06.2001. In the backdrop of these facts, whether the petitioner would receive the pay scale of Rs. 14,300-18,300/-, meant for the grade of Director/Superintending Engineer, w.e.f. the date of his ad hoc promotion, which took place on 11.10.1999, or w.e.f. his regular promotion, which was granted to him on 06.06.2001?

15. While seeking answer to the above question, it is pertinent to note, which we have already indicated above, that the petitioner had made representation, on 02.07.2001, against the reduction of his pay scale and against the recovery of the alleged excess payment, made to him, by pointing out that no regular DPC had been held at the time, when he was granted promotion, on ad hoc basis, to the grade of Director/Superintending Engineer. While responding to the petitioner's representation, the respondents had not disputed this factual assertion of the petitioner and took shelter of the OM, dated 20.12.2000, aforementioned in order to justify their action of directing reduction of pay scale of the petitioner and recovery of the alleged excess payment made to him.

16. Considering the fact that it has remained undisputed by the respondents that when the petitioner was promoted to the grade of Director/Superintending

Engineer, posts, in the grade of Director/Superintending Engineer, were lying vacant, but no DPC was convened and that the petitioner received regular promotion only when DPC was held, we have no hesitation to hold, and we do hold, that the petitioner's promotion ought to have been, and must be, treated to have related back to the date of his ad hoc promotion, i.e., 11.10.1999, and, in fact, the petitioner had been receiving pay scale of Rs. 14,300-18,300/- until the time the Office Order, dated 06.06.2001, was issued reducing his pay scale from Rs. 14,300-18,300/- to Rs. 12,000-16,500/- on the strength of the OM, dated 20.12.2000, which has already been held to be invalid by this Court.

17. Because of what have been discussed and pointed out above, this writ petition succeeds. The order, dated 17.11.2009, passed by the learned Tribunal, is hereby set aside. We also set aside and quash the Office Order, dated 06.06.2001, as well as the Office Order, dated 14.03.2007, and, in consequence thereof, we hold and direct that the petitioner shall be treated as a person entitled to receive pay scale of Rs. 14300-18300/- w.e.f. 11.10.1999 (i.e., the day of his ad hoc promotion) and the same shall be made available to him. We further direct that the deductions, if any, which may have been made from the petitioner's salary and allowances in consequence of the Office Order, dated 06.06.2001, shall be returned to the petitioner,

18. With the above observations and directions, this writ petition shall stand disposed of. No order as to costs.