(2013) 04 DEL CK 0118

In the Delhi High Court

Case No : W.P. (C) 3519/2012

Mukhtiar Singh APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0118

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner had prayed before the Central Administrative Tribunal that respondents be directed to give him Grade Pay in sum of Rs. 2800 and not Rs. 2400 in the Pay Band Rs. 5200-20200 as recommended by the 6th Central Pay Commission. He further prayed that he be granted second financial upgradation envisaged by the Modified Assured Career Progression Scheme with effect from November 18, 2008. Relief has been declined by the Tribunal.

2. From the facts which we would be noticing hereinafter, it is apparent that some hidden hand was manipulating things at the instance of the petitioner who was getting the benefit of working at Delhi and not all over India. From the admitted facts as they are emerging, we would be constrained to accord approval to the view taken by the Tribunal.

3. Petitioner is equating himself with one Sh. Shiv Kumar and one Sh. Prem Singh, both of whom were appointed as Copy Holder in the Ministry of Law, Legislative Department in the pay scale of Rs. 3050-4590. Both got benefit of first financial upgradation in the scale of Rs. 4000-6000 with effect from July 28, 2004 since they completed 12 years service since the then in vogue Assured Career Progression Scheme required financial upgradation to be given to an employee who could not earn a promotion even after serving for 12 years. With

effect from July 28, 2004, the pay scale Rs. 4000-6000 was upgraded to Rs. 4500-7000 and accordingly Shiv Kumar and Prem Singh were placed in the said scale with effect from July 28, 2005. The two earned promotion to the post of Proof Reader on July 2, 2007 and October 01, 2009 respectively. Whereas Prem Singh retired from service as a Proof Reader, working as a Proof Reader Shiv Kumar was granted the second financial upgradation and was put in Pay Band-II of Rs. 9300-34800 with Grade Pay of Rs. 4200 under the Modified Assured Career Progression Scheme with effect from September 21, 2010.

4. Having penned profile the career graph of Shiv Kumar and Prem Singh, we do likewise for the petitioner.

5. He was appointed as a Lower Division Clerk (LDC) under Border Roads Organization (BRO) in the pay scale Rs. 3050-4590 i.e. the same scale of pay in which Shiv Kumar and Prem Singh were appointed as Copy Holder in the Ministry of Law, Legislative Department. He completed 12 years service on December 01, 2000 and was given the benefit of the Assured Career Progression Scheme by placing him in the pay scale Rs. 4000-6000. Thus, on getting the financial upgradation the petitioner was placed in the pay scale Rs. 4000-6000 with effect from December 01, 2000 and as noted above, Shiv Kumar and Prem Singh got said financial upgradation benefit only on July 28, 2004.

6. On October 25, 2006 the Ministry of Law advertised for filling up a post of Copy Holder in the pay scale Rs. 3050-4590. It was indicated that the appointment could be either on deputation basis or on absorption basis. As noted above, by said date the petitioner was already in the pay scale Rs. 4000-6000. Knowing that the advertisement in question pertained to a lower post, petitioner applied and was appointed as a Copy Holder in the Ministry of Law on absorption. He was placed in the pay scale Rs. 3050-4590, however his last basic pay drawn as an LDC in BRO was protected i.e. Rs. 4700 p.m. Within six months petitioner requested to be treated as a deputationists because he realized that the recommendations of the 6th Central Pay Commission required Career Progression benefits to be granted after 10 years, 20 years and 30 years service i.e. three in number if promotions were not earned, and thus he could get only if he was a permanent employee of BRO.

7. We note that the petitioner was appointed on absorption basis as a Copy Holder as per order dated April 01, 2008. The order was modified when an order was passed on December 04, 2008 treating petitioner to be on deputation and not on absorption. On June 27, 2009 petitioner became entitled to be promoted as an Upper Division Clerk (UDC) in BRO.

8. The petitioner took another U-turn. He submitted a representation on July 02, 2009 requesting that he be absorbed in the Ministry of Law and on his own submitted a technical resignation as an LDC in BRO.

9. Without consultation with the parent department i.e. BRO, Ministry of Law passed an order on July 28, 2009 absorbing petitioner as a Copy Holder in the

pay scale Rs. 3050-4590 which was objected to by BRO on the ground that its concurrence was not obtained. A request was made on August 18, 2009 by BRO to the Ministry of law to cancel petitioner''s absorption and to repatriate him to BRO. Two reminders were sent on November 12, 2009 and February 12, 2009, but the Ministry of Law kept quiet, till it was virtually compelled by BRO to issue an order dated March 08, 2010 superseding the order dated July 28, 2009. The petitioner was relieved so that he could join BRO. He questioned his being relieved by filing O.A. No. 822/2010 and succeeded on a technical point. Vide order dated December 01, 2010, O.A. No. 822/2010 was disposed of observing that the order dated July 28, 2009 absorbing petitioner as a Copy Holder vested a right in him which could not be undone without hearing him and since the order dated March 08, 2010 superseded the order dated July 28, 2009 without hearing the petitioner, the same was to be quashed. However, the Ministry of Law was held entitled to pass a fresh order after notice to the petitioner and dealing with his reply.

10. The petitioner managed to stay on in the Ministry of Law, and how he did so remains a mystery because no order was passed thereafter by the Ministry of Law.

11. From the facts noted above it is apparent that the petitioner cannot claim any parity with Shiv Kumar and Prem Singh. He came with open eyes to the Ministry of Law in a lower pay scale. His last drawn pay in BRO in sum of Rs. 4700 per month was protected as personal to him. First Financial Upgradation in the parent department was personal to him as was the one earned by Shiv Kumar and Prem Singh. We concur with the view taken by the Tribunal in paragraph 17 to 22 of the impugned decision wherein the Tribunal has distinguished the decision of the Supreme Court reported as 2010 (1) SCC 52 FCI & Ors. vs. Ashis Kumar Ganguly & Ors. We reproduce said paragraphs. They read as under:-

17. From above, it is clear that there were many ups and downs in the career of applicant. He was not at par with Shri Shiv Kumar and Shri Prem Singh. The fact also remains that he knew from day one that he has been absorbed in the post of Copy Holder which is in the pay scale of Rs. 3050-4590. The pay which was protected by the Ministry of Law at the time of absorption at Rs. 4700/- was personal to him as he was granted 1st financial upgradation in his parent department in their hierarchy to the post of UDC which scale was not upgraded whereas Shri Shiv Kumar and Shri Prem Singh were granted the benefit of 1st financial upgradation in their hierarchy to the post of Proof Reader which was further upgraded as Rs. 4500 - 7000, therefore, they got benefit of this upgraded scale in 2006 itself when applicant was still in BRO. Applicant was thus given the pay as personal to him, which he was drawing in his parent department at the time of absorption in Ministry of Law. In view of the facts as explained above, the pay parity claimed by the applicant is not sustainable in law because Prem Singh and Shiv Kumar were already getting higher pay than the applicant, when he was

absorbed in the Ministry of Law. There can be no comparison between un-comparables.

18. As far as grant of benefit under MACP is concerned, since the status of applicant was always in dispute due to his own letters or his parent department, naturally it couldn''t have been released earlier. Respondents have annexed letters to show that they had asked for the CR dossiers of applicant (page 162 onwards) which were sent somewhere in 2010 and vide order dated 02.02.2011, applicant was granted the 2nd financial upgradation and after applicant exercised his option, his pay was also fixed vide order dated 22.02.2011 (page 11). In view of above, the relief, as claimed, cannot be granted.

19. Counsel for the applicant had placed reliance on the judgment in the case of Food Corporation of India & Ors. Vs. Ashis Kumar Ganguly & Ors. reported in 2010 (1) SC 52. However, perusal of same shows it was decided in a different context. The facts of the case were that the respondents therein were employees of State of West Bengal on deputation with Food Corporation of India. Similarly, officials were taken on deputation from Central Govt. also. In 1968 Section 12A was inserted in the Act so as to enable the Central Government to make an order directing its employees to be transferred to the services of the Food Corporation of India. Those employees who had been working as deputationists from the Central Government were absorbed. They admittedly were given one extra increment purported to be on the basis of a circular letter issued in this behalf while the same was denied to the respondents They had filed writ petition in 1997 inter alia contending that in terms of the proviso appended to Regulation 81 of the Food Corporation of India (Staff) Regulations, 1971 (for short "the Regulations"), they were also entitled to grant of one additional increment.

20. It was noted by the Hon''ble Supreme Court that on or about 19.11.1965, the Food Corporation of India had issued a circular stating that the transferees and deputationists were to be brought to the scales of pay of the Corporation as contained in Para 4.8 of the Manual with effect from 1.04.1965, subject to the instructions contained therein which inter alia are as under:

Fixation of pay in the case of transferees (2) Transferees from the Food Department may either opt for the Corporation pay scales or, if they so choose, retain their existing scales of pay.

21. Hon''ble Supreme Court had further referred to circular dated 19.03.1984 in terms of which respondents were absorbed. The terms clearly mentioned as follows:-

(i) The State Government employees who opt for permanent absorption in the service of the Corporation will be treated as direct recruit and will be subject to the terms and conditions as prescribed in FCI (Staff) Regulations, 1971.

Reference was also made to para 4.70 of the manual. It was held that the respondents would be entitled to the benefit of increment as per proviso to

Regulation 81 and para 4.70 of the manual itself.

22. This judgment, according to us, is based on different set of facts. Applicant could have asked for the benefit of upgraded scale of Rs. 4000-6000 if he had been granted this upgradation in Ministry of Law because the pay scale of Rs. 4000-6000 in Ministry of Law was attached to the post of Proof Reader which alone was upgraded. The applicant was given financial upgradation in BRO in the pay scale of Rs. 4000-6000 which was attached to the post of UDC. This pay scale was never upgraded. The financial upgradation is personal to a person, therefore, simply because 1st financial upgradation happened to be Rs. 4000-6000 in BRO, it doesn''t mean applicant would be entitled to get Rs. 4500-7000 in Ministry of Law. Since line of hierarchy is different in BRO and Ministry of Law, therefore, no parity can be sought with Prem Singh and Shiv Kumar. In any case, they have been regularly promoted as Proof Reader whereas applicant is still a copy holder, therefore, no parity can be claimed with them.

The writ petition is accordingly dismissed but without any order to costs.

