
(2013) 01 DEL CK 0247
In the Delhi High Court
Case No : Writ Petition (C) 717 of 2012

Raj Kumar Nirala

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0247

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, for the Appellant; Vaibhav Kalra, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—An advertisement was issued by the second respondent, a hospital under the administrative control of the Ministry of Health and Family Welfare, Government of India inviting applications for the post of Workshop Technician in the pay-scale Rs. 4000-6000. Educational qualification prescribed was an ITI Diploma.

2. The petitioner applied, and so did many others. Petitioner was lucky. He was selected and he joined.

3. Soon thereafter came the recommendations of the 5th Central Pay Commission which recommended two scales of pay for the post of Workshop Technician. Those with higher qualification were recommended to be placed in the pay-scale of Rs. 5,000-8000 and retaining the pay-scale of Rs. 4000-6000 for others. Petitioner's request to be placed in the higher pay-scale was declined on account of the reason that the post advertised envisaged lower minimum education qualification and notwithstanding he having a higher qualification would not be entitled to the higher pay-scale since the post in question was advertised in the lower pay-scale.

4. Even a visit before the Tribunal by the petitioner has been unsuccessful and

the reasoning of the Tribunal in para 6 of the impugned decision reads as under:-

6. We note that 5th CPC recommendations for the category of Other Technicians have 2 Groups namely (a) "Posts requiring matriculation with some experience as minimum qualification for Direct Recruitment" which carried pay scale of Rs. 4000-100-6000 and (b) "Technician with either a Degree in Science or Diploma in Engineering" with pay scale of Rs. 5000-150-8000. The category (a) mentions about direct recruitment whereas the category (b) does not mention the same. The advertisement reveals that the post under category (a) was covered and applications called for. The Applicant was selected for the said post and he accepted the same and joined the Institute. The Applicant has been fully aware of the same and has been getting pay in the scale of Rs. 4000-100-6000. The post under category (a) does not prescribe a qualification of degree. It is a fact that the Applicant is a graduate and passed 3 years Diploma and Medical Electronics and has passed MBA examination. It is also fact that he was selected for the Workshop Technician in category (a). Further, the Applicant has joined in the year 1999 by which time the recommendations of the 5th CPC have already been under implementation. Respondents advertised only for the post of Workshop Technician in category (a) carrying for Rs. 4000-6000. He having applied for the said post, getting selected and joining the post he cannot claim of higher scale of pay. Applicant's higher qualification does not entitle him higher post viz. category (b) Workshop Technician with higher pay scale of Rs. 5000-8000.

5. We entirely agree with the reasoning of the Tribunal inasmuch as when the post was advertised the differential pay-scales had already come into being in the form of the recommendations made by the Commission but not yet formally accepted by the Government. In anticipation of acceptance the post was advertised, not with reference to the pre-revised pay-scales but with respect to the proposed revised pay-scales. Needless to state, while advertising for the post the educational qualifications prescribed were for the lower pay-scale and merely because the petitioner has a higher educational qualification would not entitle him to the higher pay-scale.

6. Faced with aforesaid learned counsel for the petitioner, clutching on to straws, draws our attention to para 4.1 of the Original Application wherein it is pleaded that respondent No. 2 invited applications for Technicians in the pre-revised pay-scale Rs. 1230-2040 and would draw our attention to the reply filed to the OA where averments made in para 4.1 of the OA have been admitted. Thus, the plea is that the selection was in the pre-revised pay-scale where a single scale existed and elaborating the argument it is urged that when the recommendations of the Central Pay Commission were accepted, creating two pay-scales, petitioner automatically become entitled to the higher pay-scale.

7. It is regretful that such an admission was made while responding to para 4.1 of the reply. However, in para 3 of the preliminary objections it has been categorically pleaded as under:-

3. That the applicant was appointed against the post of Workshop Technician (ICU) in the pay scale of Rs. 4000-6000 as per the advertisement issued by the answering Respondent, as the applicant applied for the said post against the pay scale of Rs. 4000-6000 only. Therefore, the claim of the applicant is not tenable. A copy of the advertisement is annexed as Annexure R-1.

8. Annexed as Annexure R-1 is the advertisement which shows that the post was advertised in the pay-scale Rs. 4000-6000.

9. That is the end of the matter and we need not waste any further stationery. The writ petition is dismissed but without any order as to costs.