

(2006) 03 DEL CK 0221
In the Delhi High Court
Case No : Writ Petition (C) 7627 of 2003

Satpal Arora

APPELLANT

Vs

The District and Sessions Judge

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Citation : (2006) 88 DRJ 649 : (2007) 1 SLJ 484

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Pramod Gupta, for the Appellant; Avnish Ahlawat, for R-1, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The Writ Petitioner has sought for quashing of orders dated 19-1-2002 and 7-6-2003, relating to his pay fixation, issued by the first respondent his employer.

2. The admitted facts of the case are as follows. The petitioner was directly recruited to the post of Lower Division Clerk in the office of the respondent on 07-04-1982, in the pay scale of Rs. 260-400, later revised to Rs. 950-1500. He was promoted as stenographer, in the grade of Rs. 1200-2040 on 30-01-1987. He was later confirmed to the grade on 01-08-19 87. The petitioner was promoted on temporary basis, to the grade of Rs. 1400 -2300 with effect from 13-12-1993. On 10-05-1996, he represented to the respondent stating that he had developed severe pain in the back and shoulder joints; he also stated that he was undergoing treatment. The representation went on to mention that the petitioner was medically advised to avoid typing. He Therefore requested to be posted back to the initial post of LDC. Whilst representing, the petitioner used the expression reversion for being sent back to the original post of LDC. The respondent by order dated 09 -08-1996, accepted the petitioner"s request. That order reads as follows:

Shri. Satpal Arora who was initially appointed as Lower Division Clerk, and was promoted as stenographer in the grade of Rs 1200-2040 vide order dated 24-01-1987 is hereby reverted as lower division clerk in the grade of Rs. 950-1500, at his own request from the date he hands over the complete charge of his post. Further the reversion of Shri Satpal Arora, will not affect his seniority and continuing of his service as Lower Division Clerk.

3. The petitioner was the offered appointment in the grade of stenographer on ad-hoc basis for a period of six months, by an order issued in 1997. This was because he had represented against what he termed as wrongful fixation of pay in the scale of lower division clerk. The respondent had fixed him in the scale of LDC at Rs. 1250/- (in the grade of Rs. 950-1500). The petitioner was drawing Rs. 1600/- in the grade of Rs. 1400-2300. Through representations, he claimed the basic salary of Rs. 1500/- being the maximum and the scale of Rs. 950-1500, the grade of LDC. This representation was made to the respondent on 06-11-2001. The petitioner had claimed fixation at Rs. 1500/- on the basis of Fundamental Rule 22 of the Fundamental and Supplementary Rules, which are admittedly part of the terms and conditions applicable to employees working with the first respondent. The representation was declined by the first impugned order dated 24-01-2002; the first respondent by the order stated as follows:

Memo:

reference application dated 06-11-2001 on the subject captioned above, you are hereby informed that it is not a case of transfer from one post to a new post but a case of reversion to the old post at your own request. Rule 15, of the Fundamental Rules does not apply. Hence, application referred to above is rejected by the Ld. Distt and Sessions Judge, Delhi vide order dated 19-01-2002.

4. The petitioner unavailingly represented against the above order; his appeal was referred back by the Registrar of this Court, to the respondent who, by the second impugned order, rejected the claim for a revision. The petitioner characterises his fixation of the pay as wrongful and contrary to Fundamental Rule(F. R. 22).

5. Mr. Pramod Gupta, appearing on behalf of the petitioner, urged that the two impugned orders were contrary to law and F. R. 22. He also submitted that the denial of proper fixation of salary in the pay scale of LDC was arbitrary. It was submitted that F. R. 22 provided for situations exactly like the present one where an employee/public servant was transferred, at his request, to the lower post. In such an eventuality, the employer had to protect the pay drawn in the higher post, to the extent possible in the lower scale. In case the employee was being paid higher emoluments than the maximum in the lower scale of pay, such maximum pay scale in the lower grade had to be the basis of pay fixation.

6. The relevant part of FR 22, falling for consideration in these proceedings, reads as follows:

22. (I)(a)(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis :

(3) When appointment to the new post is made on his own request under Sub-rule (a) of Rule 15 of the said rules, and the maximum pay in the time-scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay.

7. The respondent in its return has contested the petitioner's claim. Its defense is founded on the inapplicability of F. R. 22. The respondent terms the petitioner's claim for fixation of salary at Rs 1500/- as misconceived and baseless. It alleges that the petitioner was never transferred to the post of LDC; he was reverted to that position at his request. It also relies upon a clarification issued by the finance department on 02-06-2004.

8. Ms. Avnish Ahlawat, learned Counsel, besides reiterating the contents of the counter affidavit, also urged that the phraseology adopted by the petitioner while seeking a posting back to the cadre of LDC was crucial; he sought reversion which can never be contemplated as one of the situations covered by FR 22. According to counsel, the petitioner's salary was fixed at Rs. 1250/- correctly, on the basis of the length of service put in by him, in the stenographer's cadre; this denoted that continuity was granted. There was no arbitrariness in the exercise.

9. Learned counsel relied upon the decision of the Supreme Court in Comptroller and Auditor General of India and Others Vs. Farid Sattar, , for the contention that unilateral requests of posting, to the lower grade were not covered by FR-22. Reliance was placed upon the following passage in the judgment:

Fundamental Rule 22(I)(a)(2) provides that, when an employee is transferred to a new post, which does not involve assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis. Thus FR 22(I)(a)(2) would be applicable where there is an ordinary transfer which is not by way of reversion to the lower post and in such a case, the pay of an employee on transfer to a new post has to be protected. Fundamental Rule 22(I)(a)(3) is applicable where an employee is transferred to a new post on his own request under Sub-rule (a) of Rule 15, and further in such a transfer no reversion is involved. In such a transfer to a new post if the maximum pay in the time-scale of the transferred post is lower than his pay in respect of the old post held regularly, he is required to draw that maximum as his initial pay. For illustration - an employee working in a pay scale of Rs. 1400-2600 was drawing pay at the stage of Rs. 2040 and he is transferred on his own request not involving reversion to a post which carries pay scale of Rs. 1200-2040, in such a case, the

maximum pay which he was drawing viz., Rs. 2040 has to be protected on the transferred post which carries a pay scale of Rs. 1200-2040. It is not the case here. Here, what we find is that the respondent on his own volition sought transfer on certain terms and conditions accepted by him. The terms and conditions of unilateral transfer are very clear and there is no ambiguity in it. The terms and conditions provided that the respondent on transfer would be appointed to a post which is lower to the post which he was occupying prior to his transfer and he was also required to tender technical resignation from the post which he was holding with a view to join the lower post as a direct recruit and was to rank junior to the junior most employee in the cadre of Accountant. He was further required to forgo any benefit of passing any departmental examination while working in the higher post. In such a situation, the pay of the respondent had to be fixed with reference to the lower pay scale and not with reference to the pay drawn by him in the higher post since he was to be considered as a direct recruit in the lower post.

Under the terms and conditions of the transfer, the pay which the respondent was drawing on the higher post was not required to be protected when he joined the lower post of Accountant.

For the foregoing reasons, we are of the view that the pay of the respondent as fixed earlier, was correctly refixed by memorandum dated 8-11-1994. We, Therefore, find that the judgment and order of the Tribunal is not sustainable in law and the same deserves to be set aside. We order accordingly. The appeal is allowed. There shall be no order as to costs.

10. Counsel for the petitioner however, disputed applicability of the ratio in the judgment, seeking to distinguish it from the facts of this case.

11. The undisputed factual position is that the petitioner was promoted to the grade of stenographer (Rs. 1200-2040), from the post of LDC (Rs. 950-1500). He was paid a basic salary of Rs. 1600/- in the stenographer's grade, when on account of a medical condition, he sought to be posted back (reverted) as LDC. The respondent acceded to the request, and sent him back to the grade of LDC. While doing so, however, his basic pay was fixed at Rs. 1250/-. The principal defense of the respondent to the claim in these proceedings, turns on the phraseology of the petitioner (tm)s request to be reverted as LDC; it is stated, that reversion does not attract the benefit of FR 22, which enables the employee, upon being posted/ transferred to another, lower post, to limited pay protection. Besides, the respondents rely upon the judgment in Abdul Sattar(tm)s case.

12. First, the terminology of the request, and the order of reversion. I am not persuaded to agree with the reasoning put forth by the respondent on this aspect. The intention of the petitioner was to secure relief, due to his medical condition. The respondents did not dispute that he was unable to continue with his duties as stenographer, and rightly granted the request. The question of semantics here, in my opinion, ought not to cloud the intention of the parties;

the petitioner (tm)s request was neither for escaping rigors of a transfer or a hard posting; nor was the move punitive. The expression reversion in that sense is a loose one, since the petitioner was sent back on health grounds. No impediment was pointed out which prevented the petitioner from being treated as having been posted or transferred back to the post of LDC.

13. As regards the decision in Abdul Sattar, significantly the court stated, in para 6 that the rule (FR-22) is geared to benefit the employee, sent to man the other post. However, relief was denied in that case, since the respondent official had been given express terms while being sent back, which had been accepted by him. The terms included the stipulation that

that the respondent on transfer would be appointed to a post which is lower to the post which he was occupying prior to his transfer and he was also required to tender technical resignation from the post which he was holding with a view to join the lower post as a direct recruit and was to rank junior to the juniormost employee in the cadre of Accountant.

In this case, admittedly, the posting/ reversion of the petitioner was not conditioned upon express terms; indeed the pay fixation is premised upon his continuance in the lower grade; what is more, the petitioner (tm)s seniority too was preserved, in the post of LDC, upon his return. I am of the opinion that the judgment in Abdul Sattar, cannot Therefore be cited as an authority for deciding this case; the decision turned on the facts of the case.

14. In view of the foregoing reasons, I am of the view that the petitioner is entitled to the benefit of relevant portion of FR 22, and consequent pay fixation at the maximum basic pay of the grade of LDC (Rs. 1500/-). The impugned orders are hereby quashed. The respondent shall issue a consequential pay fixation order to the petitioner, as on the date of his rejoining the post of LDC, fixing his basic salary at Rs. 1500/- with effect from that date. The petitioner is entitled to consequential arrears of differential amounts, which shall be paid to him within six weeks from today.