
(2016) 01 RAJ CK 0033
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1293/2007

Shiv Charan Lal Jonwal

APPELLANT

Vs

Hindustan/Sambhar Salt Limited

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Citation : (2016) 01 RAJ CK 0033

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Shobhit Tiwari and Divesh Sharma, Counsels, for the Appellant;
Tanveer Ahmed, Counsel, for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—1. This writ petition has been preferred by petitioner Shiv Charan Lal Jonwal challenging order dated 02.02.2007 (Annexure-14) passed by respondent Hindustan/Sambhar Salt Limited. By impugned order, respondent withdrew the benefit granted to petitioner of Central Government D.A. (CDA) vide order dated 13.09.1989, and instead he was given benefit of IDA pattern and accordingly revised his pay scale under the IDA pattern with effect from 01.01.2007.

2. Petitioner, vide order dated 4/5.12.1978, was appointed on the post of Inspector in the pay scale of Rs. 425-700. The dearness allowance was granted to him at the Central Government rates. He successfully completed the probation period of two years. Thereafter vide order dated 17.01.1985, he was promoted to the post of Deputy Superintendent. On receiving the copy of order of promotion, petitioner assumed the charge of that post on 12.03.1985. His promotion was treated to have been made with effect from 14.12.1984. Vide order dated 06.05.1985, petitioner's pay was fixed in the pay scale of Rs. 550-900. Even though, the petitioner completed the period of probation on promotional post from the date of promotion so made, however, vide order dated 21.02.1987, the term of probation was extended for a further period of six

months with effect from 14.12.1986. Eventually vide order dated 26.10.1987, the petitioner was confirmed in that post on completion of extended period of probation. It was then the petitioner was given further promotion to the post of Superintendent in the pay scale of Rs. 700-1300, on ad hoc basis for a period of six months or till regular arrangement is made. In the meantime, the vacancy so existing from the year 1987, was notified. The post of Superintendent is filled in by way of promotion or direct recruitment. It was in the meanwhile that the petitioner, being in service, also applied for said post, where it was required that forms were required to be submitted by 25.04.1988. The petitioner submitted his form as per the scheduled date. He was called for interview almost after lapse one-and-a-half-year i.e. on 08.09.1989 vide office letter dated 29.08.1989. Though, the application forms for the post of Superintendent were submitted by all concerned by 25.04.1988, the respondent delayed the process and in the meantime, the petitioner continued on the said post on his promotion and his pay was also fixed in the pay scale of Superintendent vide order dated 03.03.1988. He continued to draw the benefit of dearness allowance at par with the Government of India employees, i.e. on his promotion to the post of Superintendent at the initial stage as well as on his extended period followed by regular appointment. Petitioner was however thereafter promoted/appointed on the post of Superintendent vide order dated 11.09.1989 (Annexure-8). In the said order dated 11.09.1989, it was mentioned that the said appointment by way of promotion was on probation for a period of two years and petitioner would be governed by the rules and regulations of the respondent.

3. Petitioner was working on the promoted post of Superintendent in the pay scale of Rs. 700-40-900-EB-40-1100-50-1300 with effect from the date he joins the duty. It was clearly mentioned in the order dated 11.09.1989 that petitioner will be on probation for a period of two years, which can be curtailed or extended at the discretion of the management, and that he would be governed by the rules and regulations of the respondent company as may be in force from time to time. The respondent vide order dated 12.02.1988 it was ordered that the promotion of the petitioner on the post of Superintendent is purely on ad hoc basis and such appointment will not bestow a claim for regular appointment and the ad hoc service rendered would not count for the purpose of seniority in that grade or for eligibility for promotion, confirmation etc. The petitioner submitted representation that since he was drawing pay and allowance from the date of appointment on the post of Superintendent i.e. from February, 1988 therefore his promotion should be treated from the date of joining on that post i.e. 13.02.1988. The respondent, by order dated 12.10.1989, provided that though the promotion would not be treated from 13.02.1988, the petitioner would be entitled for the period of salary and other benefits of the post of Superintendent from 13.02.1988 and accordingly the petitioner has been getting the benefit of the post of Superintendent with effect from February, 1988 i.e. the pay fixation, Central Government Dearness Allowance benefits and benefit of annual grade increments. Petitioner was thereafter extended the benefit of fixation in view of

recommendation of 4th Pay Commission and therein also the length of service on the post of Superintendent was taken from the year 1988, as he was drawing increments taking the date of pay scale of the post of Superintendent with effect from February, 1988. The post of Superintendent was re-designated as the post of Manager and the petitioner crossed the probation period successfully and thereafter confirmed on that post, and that throughout the period, the petitioner was receiving the benefit of dearness allowance at par with the Central Government employees. The petitioner has submitted that those employees who could not be recruited on the post of Superintendent along-with him, were thereafter promoted on the post of Superintendent, even though they were much junior to him, and such employees are - Sarva Shri S.S. Chhatwal, M.K. Kotia, T.R. Meena, V.K. Gupta, R.R. Pingolia, M.L. Chejara, R.P. Mishra and S.H. Makandar.

4. It is argued that matter pertaining to dearness allowance on the pattern of the Central Government employees as well as Industrial Dearness Allowance was subject matter of litigation, which was then decided by the Supreme Court on 03.05.1990 with certain directions as to in what manner the benefit of Central Government D.A. and Industrial D.A. can be given. The Supreme Court decided that the scale of pay and dearness allowance will be extended to those employees, who have been appointed with the specific terms and conditions for grant of Central Government D.A. Said benefit would be equally applicable to the employees, who are being paid Central Government Dearness Allowance. There are other directions in that regard also.

5. Shri Shobhit Tiwari, learned counsel for petitioner, has argued that apparently the impugned order dated 02.02.2007 (Annexure-14) has been passed by the respondent without notice or opportunity of hearing to the petitioner. Petitioner was given benefit of Central Government Dearness Allowance and thereafter he also successfully completed period of probation, but, as a result of illegality committed by the respondent, petitioner would now be getting less salary than what he has been drawing for last so many years. The impugned order is a severe penal consequence to the petitioner. Such order could not be passed without providing opportunity of hearing. The government has arbitrarily passed that order. Petitioner has been drawing such benefit for the date of initial appointment till the date of passing of the impugned order. Petitioner has been discharging his duties to the utmost satisfaction and dedication. He has been in service of the respondent since 1979. The pay scale of the post of Superintendent was made admissible to the petitioner from the month of February, 1988. Many of juniors of the petitioner, who could not succeed in securing merit in direct recruitment and even granted promotion on the higher post later than the petitioner, have been allowed benefit of Central Government dearness allowance and the pay scale, whereas the petitioner is being deprived of such benefit by passing the impugned order, as a consequence of which the petitioner would now be drawing almost seven to eight thousand less than the employees junior to him. The petitioner cannot therefore be discriminated

because he is also holding the same post and that too from much earlier date. This anomalous situation has arisen as a result of faulty application of rules by the respondent. There is no justification for taking such a view after 14 years.

6. Shri Tanveer Ahmed, learned counsel for respondent, opposed the writ petition and submitted that the period of probation of petitioner was extended by six months with effect from 14.12.1986 and he was made confirmed on that post on completion of extended probation period on 13.06.1987. Petitioner was in fact not promoted on the post of Superintendent on regular basis but it was made on ad hoc basis for a period of six months or till regular arrangement is made, which ever is earlier. Subsequently, the post was filled in on direct recruitment basis and petitioner, being found fit for appointment in direct recruitment, he was given appointment on the post of Superintendent and as per the guidelines of the Government, all the appointees, appointed on or after 01.01.1989, are to be given Dearness Allowance on IDA pattern. Since petitioner was appointed on the post of Superintendent with effect from 11.09.1989 under direct recruitment quota, was entitled for DA under IDA pattern and it was only due to inadvertence it came to be written in the offer letter that he is promoted as Superintendent, which was rectified vide order dated 13.09.1989. The petitioner had joined as Superintendent as a directly recruitment he cannot claim parity with other employees, who were subsequently given promotion to the post of Superintendent. It is settled legal position that the terms and conditions of appointment cannot be compared with the terms and conditions of promotion. Case of petitioner is altogether different than the case of other employees cited by the petitioner. The Supreme Court in its decision dated 03.05.1990, has clearly ordered that all appointments made on or after 01.01.1989 in respect of all category of employees by the PSEs would be deemed to have been governed by the IDA pay scale. The petitioner cannot be given the benefit under CDA pattern, which was not available to the employees appointed on or after 01.01.1989.

7. Having heard learned counsel for the parties and perused the material on record, I find that the impugned order has indeed been passed in the name of correction of mistake in the order dated 13.09.1989 after as long as 18 years. The petitioner has neither been served with any notice nor has been provided opportunity of hearing. This order has indeed very sever and penal consequence for the petitioner. The pay of the petitioner has been sought to be substantially reduced whereas many of his juniors, though appeared in the same competitive examination, could not secure appointment despite competing. They were later promoted on the same post. They are receiving the dearness allowance on CDR pattern. The petitioner has cited names of such eight persons in para 8 of the writ petition. The respondents, in reply thereto, have not disputed this position. The Supreme Court in *Jute Corporation of India Officers' Association v. Jute Corporation of India Limited and Another* - , (1990) 3 SCC 436, while deciding this controversy, in para 7 of the judgment enumerated five directions, first of which direction inter-alia provides that the scales of pay and dearness allowance

as recommended in the Report will be extended to those employees who have been appointed with specific terms and conditions for grant of Central dearness allowance. This will be equally applicable to the employees who by rules laid down by the public sector enterprises are being paid Central dearness allowance. Second direction provides that the employees appointed on or after January 1, 1989, will be governed by such pay scales and allowances as may be decided by the government in its discretion. Those appointed earlier with IDA pattern will continue to be governed in accordance with the terms and conditions of their appointment. Admittedly, the petitioner has been appointed on the post of Superintendent by order dated 11.09.1989, which is after 01.01.1989. The third direction is to the effect that the pay revision for those employees in respect of whom the recommendations are hereby being directed to be implemented hereafter, will take place only as and when similar changes are effected for the Central Government employees and that these employees will however, continue to enjoy the option to switch over to the IDA pattern of the scales of pay etc. on a voluntary basis.

8. Even according to the directions of the Supreme Court, the action of the respondent in withdrawing the benefit without any notice or opportunity of hearing to the petitioner cannot be justified. The petitioner ever since his initial appointment all throughout has been receiving the pay scale and dearness allowance under CDA pattern. The respondent never gave option to the petitioner to choose CDA or IDA. They did not disclose service of condition while inviting application and making appointment of the petitioner on the post of Superintendent. In view of the judgment of the Supreme court, therefore, the petitioner having received the benefit of salary and dearness allowance under CDA pattern, would continue to receive the same having been appointed on 01.09.1989 he must be held entitled to receive and continue to receive the pay scale as well as the dearness allowance under the CDA pattern.

9. In the result, writ petition is allowed. The impugned order dated 02.02.2007 is quashed and set aside. The petitioner is held entitled to receive and continue to receive the pay scale as well as the dearness allowance under the CDA pattern, with all consequential benefits.