

(2014) 03 DEL CK 0066
In the Delhi High Court
Case No : Writ Petition (C) 8417 of 2011

S.K. Mathur

APPELLANT

Vs

The President Secretariat and Another

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226

Citation : (2014) 2 ILR 1523

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Jyoti Singh and Mr. Vaibhav Kalra, for the Appellant; M.K. Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

R.V. Easwar, J.—The petitioner in these proceedings taken under Article 226 of the Constitution of India challenges the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi on 02.02.2010 in O.A. No. 2788/2008. The petition has been filed this way. The petitioner was appointed as Assistant Director (Horticulture), CPWD. He was thereafter sent on deputation to DDA in the same capacity, i.e. Assistant Director (Horticulture). He was then sent to the President's Secretariat at the President's Garden, Rashtrapati Bhawan on 19.12.1970, in the capacity of Garden Superintendent. On 08.04.1974, he was permanently absorbed in the President's Secretariat as Superintendent in the President's Garden which is equivalent to that of the Deputy Director of Horticulture in CPWD. The post was upgraded to the rank and pay scale of Director, CPWD in the pay scale of Rs. 3700-5000 w.e.f. 30.04.1996 as recommended by the 4th Central Pay Commission. An order was passed on 30.04.1996 by the President's Secretariat to this effect and it is common ground that the order mentioned that upgraded scale was purely personal to the petitioner and as and when he would leave the post, the pay scale of the said post would be brought down to its earlier level.

2. When the 5th Central Pay Commission's report came, the President's Secretariat vide office order dated 22.10.1997 revised the pay scale for the post of Superintendent at Rs. 12000-16500 w.e.f. 01.01.1996. As per this order, the petitioner was granted the pay scale of Rs. 12000-16500 and this is also not in dispute.

3. The petitioner retired from service on 01.04.1998 and his retirement dues were calculated on the basis of pay scale of Rs. 12000-16500. In the meantime pursuant to certain representations, a revised recommendation was made by the 5th Central Pay Commission according to which the pay scale for the post of Director of Horticulture and Additional Director of Horticulture in CPWD was upgraded to Rs. 14300-18300 w.e.f. 01.01.1996 as per the decision taken by the Ministry of Finance. Office orders were accordingly passed on 06.10.1999 and 28.08.2001.

4. The petitioner, based on the revised recommendation of the 5th Central Pay Commission and the aforesaid office orders made several representations to the President's Secretariat seeking upgradation of his pay scale to Rs. 14300-18300 w.e.f. 01.01.1996 and for calculation of his retirement dues on that basis. These representations were rejected by the President's Secretariat by several orders, the last of which was dated 13.06.2008.

5. Aggrieved by the same, the petitioner filed O.A. No. 2788/2008 before the CAT u/s 19 of the Administrative Tribunal's Act, 1985 praying for a declaration that the order passed by the first respondent was null and void and for issuance of appropriate orders to the respondents to refix the revised pay scale of the petitioner at Rs. 14300-18300 w.e.f. 01.01.1996 and to pay all consequential benefits, including retirement benefits on the basis of the revised pay scale and pay the same along with interest @ 10% per annum from 01.01.1996 till payment.

6. The Central Administrative Tribunal vide the impugned order rejected the application filed by the petitioner and dismissed the same. The reasoning of the Tribunal runs like this. It is the prerogative of the executive to fix the pay scale on the basis of the recommendation of the Pay Commission and the power to interfere with the same is limited to ensuring that there is no hostile discrimination. The nature of the work carried out by the petitioner as Garden Superintendent in the President's Secretariat is not similar to the nature of the functions of the Director/Additional Director of Horticulture or the Superintending Engineer working in the CPWD. Pay-parity presupposes that the work is equal and an inexplicable pay differentiation alone can be looked upon as discrimination against an employee which is absent in the present case because of the difference in the nature of the duties. The argument of the petitioner that on upgradation of the scale of the Director/Additional Director, Horticulture, CPWD to the higher scale of Rs. 14300-18300 w.e.f. 01.01.1996 automatically upgrades the pay scale of the petitioner also, to that scale, is not correct because mere classification of an earlier pay scale would not entitle the petitioner

automatically to a higher scale and cannot be the basis for claiming pay-parity. There is no complete and wholesale identity between the two posts and merely because the petitioner and the Director/Additional Director of Horticulture were carrying on identical work, they cannot be paid equally if there is no complete or wholesale identity. Moreover, the executive has considered the representation of the petitioner twice and turned it down and the prerogative of the executive cannot be interfered with lightly as it would upset the constitutional principle of separation of powers between the three organs of the State. On this reasoning the OA was dismissed by the Tribunal.

7. In support of its conclusion the Tribunal relied upon several judgments of the Supreme Court.

8. Counsel for the petitioner submitted before us that the post of Garden Superintendent in the President Secretariat is equivalent to that of a Deputy Director in the CPWD and both were similarly situated and involved identical work. It is pointed out that the upgradation benefit which inured to the Additional Director of Horticulture at CPWD as per the revised recommendations of the Central Pay Commission, were withheld in the case of the petitioner despite the identity between the nature of the functions of the two posts. It is further pointed out that the upgradation recommended by the 3rd and 4th Central Pay Commissions were awarded to the petitioner too and there was, therefore, no reason to withhold the revised recommendation of the 5th Central Pay Commission upgrading the pay scale from Rs. 12000-16500 to Rs. 14300-18300.

9. Counsel for the respondents submitted that judicial restraint must be employed in matters of upgradation of pay scales, paying due regard to the theory of separation of powers as held by the Supreme Court in *S.C. Chandra and Others Vs. State of Jharkhand and Others*, It is submitted that mere classification and grant of earlier pay scale is no criterion for pay parity and that a mere difference in the pay scale does not amount to discrimination. It is stated that the requirement for pay parity is that both the groups should not only work in identical conditions, but should also discharge equal and same duties as held by the Supreme Court in *State of Haryana and Another Vs. Tilak Raj and Others*, It is accordingly contended that the Tribunal rightly dismissed the application.

10. We have carefully considered the facts and material on record in the light of the rival contentions.

11. The facts are not in dispute, except for the aspect that whether the nature of duties of the petitioner is the same as those of the superintending engineer who is working in the CPWD. That however, should not be allowed to come in the way of granting relief to the petitioner as prayed for because there are other overriding aspects compelling the grant of relief to the petitioner. The petitioner's services were requisitioned by the President's Secretariat in 1970. Had he continued in the CPWD itself, which is his parent department, he would have become Director (Horticulture) there. A letter dated 21st October, 1991 was

written by the Director of Horticulture, CPWD, New Delhi to the Under-Secretary (Admn.), President's Secretariat, Rashtrapati Bhawan. This letter refers to the steps for the advancement of the career of the petitioner herein. The letter brings out the following facts in favour of the petitioner:-

(a) the petitioner being a Class-I officer, his services rendered as such are normally to be given weightage as the post of the Garden Superintendent in the President's Secretariat is not a cadre service;

(b) the comparison between the engineering services and agricultural scientists may not be justified since these services have their cadre; moreover, persons who had joined DDA as Section Officers (Horticulture) after 1959 have become Directors of Horticulture at least two years prior to the date of the letter-names of such persons have been given in the letter which is Annexure P-2 (colly);

(c) Assistant Directors who were selected after the petitioner in the DDA have also become Directors (Horticulture) and normally the petitioner would have also become Director (Horticulture) in DDA but for the President of India requisitioning his services by name; had the petitioner joined DDA at that time he would have become Director of Horticulture at least 5 to 6 years prior to the date of the letter;

(d) The petitioner was promoted as Deputy Director in 1974 and normally 5 years of service are required to become Director of Horticulture-the petitioner has served as Deputy Director for more than 15 years (three times more than the minimum period required for becoming Director of Horticulture).

Highlighting these aspects the letter makes out a case for the promotion of the petitioner as Director of Horticulture. The request however could not be acceded to for the only reason that the President's Secretariat is governed by its own rules-President's Secretariat (Recruitment and Conditions of Service) Rules, 1976 and there is no post of Director (Horticulture). The correspondence also indicates that the scale of the petitioner was upgraded to that of Rs. 3700-5000 which is the scale of pay of the post of Superintendent's Gardens. Consequent upon the recommendation of the 5th Central Pay Commission, the pay scale of the Superintendent, President's Gardens was revised to Rs. 12000-16500. This pay scale was further revised to Rs. 14300-18300 w.e.f. 1.1.1996 on 28.8.2001 by the CPWD where the petitioner was earlier working. The petitioner retired on 1.4.1998 after 27 years of meritorious service in the Rashtrapati Bhawan and his pension benefits were calculated on the basis of the scale of Rs. 12000-16500. No plausible reason has been given by the respondents as to why the pensionary benefits available to the petitioner should not be computed on the basis of the pay-scale of Rs. 14300-18300 which is nothing but a revision of the earlier pay scale of Rs. 12000-16500 to which the petitioner was undoubtedly entitled and on the basis of which his retirement benefits were calculated and given. In the representation given by the petitioner to the President's Secretariat, Rashtrapati Bhawan, a copy of which is available on record (Annexure P9-colly), the

petitioner has set out a chart at para 20 from which it is seen that Addl. Directors of Horticulture who were given the scale of Rs. 3700-5000 (pre-revised) were given the revised pay scale of Rs. 12000-16500 as recommended by the 5th Central Pay Commission w.e.f. 1.1.1996 and they were further given the revised pay scale of Rs. 14300-18300 pursuant to the revision orders dated 23.9.1999 and 2.7.2001, again with retrospective effect from 1.1.1996. It is the petitioner's claim that these Additional Directors and Directors were junior to him in service and had he continued in the CPWD, there would have been no objection to the grant of the pensionary benefits on the basis of the upgraded and revised pay scale of Rs. 14300-18300 w.e.f. 1.1.1996. The petitioner, in our opinion, cannot be placed in a worse position despite his services being specifically requisitioned by the President's Secretariat. It is not irrelevant to note that the work of the petitioner has been commended by the President of India. The petitioner had put in 27 years of service in the President's Garden. Even his lien with the Horticulture Department, CPWD was terminated on 8.4.1974.

12. The respondents rely on the letter dated 16.4.2002 issued by the President's Secretariat to the petitioner which says that the pre-revised scale of pay of Rs. 3,700 which was granted to him with effect from 30.4.1996 was "on personal basis and not on functional basis". It therefore says that his pay in the corresponding revised scale of pay of Rs. 12,000-16,500 has been correctly fixed and that the upgraded pay scale of Rs. 14,300-18,300 payable to the Superintending Engineers are not applicable to him as Superintendent of the President's Garden. According to the memorandum, the post held by the petitioner cannot be equated with the Superintending Engineer or Director of Horticulture in CPWD. We are unable to see the logic of the memorandum. The fixation of the petitioner's pay scale at Rs. 3,700-5,000, if it is on personal basis and not on functional basis, ought to have been taken to its logical conclusion. The petitioner was also given the corresponding revised pay scale of Rs. 12,000-16,500 on the basis of the 5th Pay Commission Report. But when this pay scale was upwardly revised to Rs. 14,300-18,300, the respondents have refused to calculate the retiral benefits of the petitioner on that basis which is un-understandable. The respondents rely on annexure R-2 which is a communication dated 17.1.2003 in which the Ministry of Finance was requested to consider the representation of the petitioner. From this communication, it is seen that earlier the Ministry of Finance had rejected the petitioner's representation on the ground that the issue has to be examined on the basis of comparison of the post held by the petitioner with the post existing in CPWD, having due regard to the provisions of the recruitment rules of both the posts and the duties and responsibilities attached to them. In response to the aforesaid view of the Ministry of Finance, the President's Secretariat in the communication dated 17.1.2003 enclosed copies of the recruitment rules relating to the post of Superintendent, President's Garden and made a request to the Ministry of Finance to examine whether the request of the petitioner can be considered. By a

communication issued on 7.7.2003 the Ministry of Finance intimated the President's Secretariat that the proposal has been considered and "it has, however, not been found feasible to agree to the proposed". Subsequent representations had also met the same fate. When once the petitioner was given the pay scale equivalent to that of the pay scale of the Additional Director of Horticulture (i.e., 12,000-16,500), we are inclined to think that there was implicit recognition of the fact that the nature of the duties and responsibilities of both the petitioner and the Additional Director of Horticulture in CPWD was the same. If that is so, the revision of that pay scale on 2.7.2001 to Rs. 14,300-18,300 should logically follow and cannot be denied. In the aforesaid circumstances, we are of the view that the petitioner's writ petition has to succeed. We hold accordingly and direct the respondents to calculate the retirement benefits of the petitioner on the basis of the pay scale of Rs. 14,300-18,300 and also grant him arrears of pay on that basis from 1.1.1996 to 31.03.1998 (i.e. date of retirement). The petitioner would also be entitled to interest on such arrears from 1.1.1996 till the date of realisation of the amount of the arrears, @ 10% p.a.. The writ petition is allowed in the aforesaid terms.