
(2013) 11 DEL CK 0121

In the Delhi High Court

Case No : Writ Petition (C) 5337 of 2013

Sudhir Kumar Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0121

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Amit Kumar, for the Appellant; Sunil Kumar, for R1-5, for the Respondent

Final Decision : Disposed Off

Judgement

Gita Mittal, J.

CM No. 15291/2013 (condonation of delay)

For the reasons stated in the application, the delay of 62 days in filing the counter affidavit is condoned. The counter affidavit is taken on record. The application is allowed and disposed of.

W.P. (C) 5337/2013

1. The petitioners in the instant case are working as Overseers with the Border Roads Organization. Initially, the petitioners were appointed in accordance with the recruitment rules in the feeder grade of Overseer and got promoted to the post of Overseer and are working in the pre-revised pay scales. The petitioners seek directions to the respondents to grant revised Pay Scale of Rs. 5000-8000 w.e.f. 01.01.1996 and PB-2 Rs. 9300-34800 with grade pay Rs. 4200 w.e.f. 01.01.2006 along with arrears according to recommendation of 6th Central Pay commission as accepted and implemented by the Government of India, with interest incurred thereupon which has been granted to Ghan Shyam Vishwakarma and Prabhdi Singh and others who are similarly situated

employee as the petitioners. It is submitted that the action of the respondents in non granting the above relief is unreasonable, arbitrary and discriminatory. It is admitted before us that the Central Government has implemented the recommendation of the Sixth Central Pay Commission w.e.f. 01.01.2006 and has promulgated Central Civil Services (Revised) Pay Rules, 2008 vide Notification bearing F. No. 1/2008-IC dated 29th August, 2008 wherein the post of Overseer has been merged with the promotional post of Superintendent BR Grade-II and has been revised to the scale of Rs. 5000-8000/- (pre-revised) and PB-2 Rs. 9300-34800 with Grade Pay Rs. 4200 as per the sixth Central Pay Commission. The denial was premised on a purported distinction between the officers holding diploma/deGREE and those not holding a diploma/deGREE. The respondents denied parity to the petitioners in the pay scales with similarly situated employees.

2. As per General Reserve Engineer Force (GREF) Group C and D Recruitment Rules, 1982, the post of Overseer was to be filled up 10% by direct recruitment and balance 90% by promotion from different posts including Mason, Carpenter, Mate, etc who were matriculate with three years regular service in the grade in GREF after passing of Trade Test. These rules were partly amended under which methods of recruitment are 80% by direct recruitment and 20% by promotion and essential technical qualification for direct recruitment to the post of Overseer is diploma in engineering. Out of 20% of promotion quota, 50% of the vacancy is reserved for promotion to be filled up by promotion from amongst other Mason and Carpenters who have completed three years regular service and matriculate subject to passing of trade test. According to these recruitment rules, the petitioners are eligible for appointment by promotion to the post of Overseer/ Supdt. BR Grade II inasmuch as they are matriculate and have completed the qualifying service for promotion to the post of Overseer and they had also passed the trade test.

3. After implementation of the Sixth Central Pay Commission recommendation, diploma holder Overseers and BR-II working in Border Road Organization had been granted pre-revised pay scale w.e.f. 01.01.1996 but the same pay scale is not granted in the case of non diploma holders Overseers and BR-II on the ground of their being non-diploma.

4. Learned counsel for the petitioners contends that one similarly situated employee of GREF, Sh. Ghan Shaym Vishwakarma being aggrieved by non grant of revised pay scale preferred a writ petition being W.P. (C) No. 51/2009 before the Gauhati High Court (Aizawl Bench) which was decided in favour of the petitioner vide judgment dated 10th September, 2010.

5. The decision of the Gauhati High Court (Aizwal Bench) in Writ Petition No. 51/2009 titled as Ghanshyam Vishwakarma V. The Director General, BRO & Ors. was unsuccessfully challenged before the Supreme Court by the respondents by filing SLP before the Supreme Court being CC No. 14236/2011 which was dismissed vide order dated 1st November, 2011.

6. Reliance has been placed upon the above mentioned two judgments in several identical cases which have been decided by different benches of the High Courts. One similarly placed employee was granted the benefit of revised pay scale in W.P. (C) 5040/2012 titled as Prabhdial Singh and others v. Union of India and others vide order of this court dated 17th December, 2012.

7. The respondents issued letters vide No. DBRB/10/1354/2012/GE I, dated 19th September, 2012, 18368/Rev Pay/OVSR/CC/DGBR/T&C dated 25th September, 2012 and 1034/6th CPC/423/EIB dated 16th October, 2012.

8. It is further submitted that the similar reliefs ought to have been extended to the petitioners who are similarly situated

9. We are informed that the same has been duly implemented in compliance of the orders of the court and several other similarly situated persons who approached the court have been granted the benefits.

10. Learned counsel appearing for the respondents submits that directions have been issued by respondents to different units, whereby persons in the particular of S/D/R Grade (ii) Overseers, Charge Mechanic, Charge Electrician E/M Grade (ii) have been granted the financial benefits of the pay scale and grade pay.

11. So far as, petitioners and other similarly situated persons are concerned, Ministry of Finance is interacting with the Secretary (BRDB) Border Roads Organization (para 4 at page 61) for extension of the benefits of the Gauhati High Court's order dated 9th September, 2010 in Writ Petition (C) 51/2009 filed by Ghanshyam Vishwakarma to all similarly situated employees of the organization. The Secretary BRDB vide their letter No. BRDB/10/1351/2013/GE-II dated 25th October, 2013 has forwarded sanction of Ministry of Finance, Department of Expenditure, E.IIIB Branch Note No. U.O. No. 10(17)/E.III.B/2012 dated 4th October, 2013 for extension of benefits of Gauhati High Court order dated 9th September, 2010 to all similarly situated employees of Border Roads Organization. The sanction has been circulated to all concerned with a direction to implement the same without further delay.

12. The Ministry of Finance has intimated by their note dated 19th August, 2013 that extension of benefits of the Gauhati High Court's order dated 9th September, 2010 to all similarly situated persons indicates that if these directions are implemented, the grievances of the petitioners would not survive.

13. Learned counsel for the respondents submits that circulation of documentation and procedure for compliance or implementation of the order requires time which includes pay fixation, comparison of due statements, audit cheque of the pay workers before the sanction of the expenditure sanction.

14. In view of the above, it is apparent that the respondents themselves have accepted all the petitioners for grant of the financial benefits, the same has been erroneously not made available to the petitioner. We have ruled several times on this aspect of the matter.

15. The writ petition is hereby disposed of directing the respondents that the petitioners would be entitled to grant of benefit of revised Pay Scale of Rs. 5000-8000 w.e.f. 01.01.1996 and PB-2 Rs. 9300-34800 with grade pay Rs. 4200 w.e.f. 01.01.2006 along with arrears according to recommendation of 6th Central Pay commission as accepted and implemented by the Government of India, with interest incurred thereupon which has been granted to Ghan Shyam Vishwakarma and Prabhdial Singh and others who are similarly situated employee as the petitioners. Arrears commuted thereon shall be paid to the petitioners within a period of three months from today.

16. No orders as to costs. The writ petition is disposed of in the above terms.