
(2014) 07 DEL CK 0221
In the Delhi High Court
Case No : WP (C) 922/2011

Syed Haider M. Rizvi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 07 DEL CK 0221

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : O.P. Agarwal and Deepak Agarwal, Advocate for the Appellant; Sunil Kumar, T.P. Singh, Nikhil Nayyar and Akansha, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J.—The short issue which arises for consideration in the present writ petition is: whether the benefit of up-gradation in the pay scale vis-?-vis the post of Manager (Sales & Marketing), National Book Trust (NBT) from Rs. 10,000-15,200 to Rs. 12,000-16,500, should be given retrospective effect?

1.1. The Ministry of Finance, Government of India (in short GOI) vide its order dated 07.06.2007 granted its approval to the up-gradation in pay scale qua the post of Manager (Sales & Marketing) in NBT, which was conveyed by the Ministry of Human Resources and Development (in short MHRD), GOI to NBT, on 19.06.2007. NBT, in turn, took out an office order on 06.07.2007, whereby formally, the pay scale applicable to the post of Manager (Sales & Marketing) was upgraded; albeit with effect from 19.06.2007.

1.2. The petitioner is thus, aggrieved by the fact that since the up-gradation in pay scale took place, according to him, pursuant to the acceptance of the recommendations of the 5th Central Pay Commission (in short, CPC) by GOI on 30.09.1997, the upgradation in pay scale was not given effect to from the said date. The representation for removal of the purported anomaly having been

made by the petitioner on 06.11.1997, it is his contention that the correction of the anomaly should have in the least been given effect from either the date when he joined NBT in the post of Manager (Sales & Marketing) which is, 21.06.1997 or the date when, he made a representation in that behalf, that is, on 06.11.1997.

1.3. The respondents, however, contend otherwise. Their stance being: that the up-gradation in pay scale was brought about for the reasons of "functional considerations" and was not on account of recommendations of the 5th CPC. It is in fact the respondents' stand that the Ministry of Finance, GOI agreed to the up-gradation of pay scale only when, NBT agreed to surrender one vacant "live post" of a Telephone Operator to meet, broadly, "matching savings" to fund the outflow of finance.

2. In the background of the above, let me briefly, sketch out the broad contours of the case, which are necessary for adjudication of the controversy raised in the present writ petition.

2.1. On 17.05.1996, the petitioner was recruited, pursuant to an interview, held against an advertised post of Manager (Sales & Marketing), in the pay scale of Rs. 3000-100-3500-125-5000. The petitioner, joined the post on 21.06.1996. In the service hierarchy, the post of Dy. Director and Regional Manager carrying the pay scale of Rs. 3000-100-3500-125-4500 were immediately below that of the Manager (Sales & Marketing).

2.2. Pertinently, these pay scales, according to the petitioner, were in vogue since the acceptance of the recommendations of the 4th CPC.

2.3. It may be noted that the petitioner also avers that the aforementioned posts, in the wake of acceptance of the recommendations of the 3rd CPC, carried the following pay scales: Manager (Sales & Marketing) was given the pay scale of Rs. 1300-1700 whereas, the Dy. Director/Regional Manager was placed in the pay scale of Rs. 1100-1600.

2.4. With the advent of the 5th CPC, a merger of pay scales was brought about whereby, the Manager (Sales & Marketing), Dy. Directors and Regional Managers were put in the same pay scale, which is Rs. 10000-15200. The recommendations of the 5th CPC were given effect to from 01.01.1996.

2.5. Notably, the recommendations of the 5th CPC were made applicable not only to all Central Government Departments but also to autonomous organisations, such as, the NBT.

2.6. The petitioner being aggrieved by the fact that the pay scales of Dy. Directors and Regional Managers had been merged with that of the Manager (Sales & Marketing), which was a higher and a promotional post, made a representation dated 06.11.1997, to the Director, NBT for correction of anomaly in pay scales.

2.7. The petitioner vide his representation highlighted the fact that the responsibilities of the post of Manager (Sales & Marketing) were onerous and hence, the pay scale of that post could not be equated to that of a subordinate posts, such as, those of Dy. Director and Regional Managers. It was averred that the post of Manager (Sales & Marketing) being a promotional post; an employee's accession to the said post was pivoted on merit, seniority and efficiency in the feeder post of Dy. Director/Regional Managers and therefore the latter posts could not be placed in the same standard of pay scale, i.e., Rs. 10000-15200.

2.8. In conclusion, the petitioner suggested that the pay scale appended to the post of Manager (Sales & Marketing) should be revised to a higher pay scale of Rs. 12000-375-16500 under Grade S-21 in terms of recommendations of the 5th CPC's notification.

2.9. The Executive Committee of the NBT, on its part, at its meeting held on 25.05.1998, considered the representation of the petitioner. Upon due deliberation, the Executive Committee came to the conclusion that there was no anomaly in the revised pay scale appended to the post of Manager (Sales & Marketing) and that, the revised pay scale had no bearing on hierarchy/status of the individual. Having said so, the Executive Committee, however, decided to refer the petitioner's representation of 06.11.1997 to GOI.

3. It appears that the NBT entered into correspondence with its administrative Ministry i.e., MHRD on the issue. Evidently, MHRD, took up the matter with the Ministry of Finance, GOI. The Ministry of Finance, GOI, it appears, was of the view that just because a lower post came to lie in the same pay scale as that which was applicable to a higher post, was not, by itself an adequate justification for up-grading the pay scale of that higher post. This decision of the Ministry of Finance, GOI was conveyed by the MHRD to NBT vide communication dated 24.09.1999.

3.1. Undeterred, the petitioner, it appears, pursued the case for removal of anomaly in the revised pay scale of the post of Manager (Sales & Marketing), which perhaps, had the sympathy of NBT, and thus, the matter was escalated by it, in turn, with its administrative Ministry i.e., MHRD from time to time.

3.2. This pursuit of the matter resulted in MHRD writing to NBT on 29.07.2005, whereby it was indicated that the matter had been discussed with the Internal Finance Division (IFD), Ministry of Finance, which was of the view that the proposed up-gradation of pay scale in the post of Manager (Sales & Marketing) by itself, was not a final solution to the problem, as it may create further anomaly and therefore, the administrative bureau could consider appropriate restructuring of the cadre so as to reduce the number of levels in the hierarchy in terms of the instructions contained in the Department of Expenditure, GOI's O.M. dated 24.11.2000. Accordingly, NBT was requested to furnish its views and comments keeping in mind the observations of the IFD, Ministry of Finance, GOI.

3.3. It appears, in this context, the discussion turned around to the possibility of NBT providing matching savings by surrendering a live post to MHRD. Views in this behalf were exchanged between NBT and MHRD, which are contained in letters dated 16.02.2006, 09.03.2006 and 05.04.2006.

3.4. Evidently, after some hesitation the NBT vide letter dated 20.04.2006 conveyed to MHRD that it proposes to surrender a vacant live post of a Telephone Operator, in the pay scale of Rs. 4000-6000, to match the savings, in order to, upgrade the pay scale of post of Manager (Sales & Marketing) from Rs. 10000-15200 to Rs. 12000-16500. Consequently, the MHRD by a return communication, on 01.05.2006, requested the NBT to send a formal proposal to it, for further consideration, after obtaining appropriate internal approvals.

3.5. However, by this time, the Ministry of Finance, GOI veered to the view that the issue could be referred to the 6th CPC. This view of the Ministry of Finance, GOI was conveyed by MHRD in their letters dated 10.10.2006 and 10.11.2006.

3.6. Fortunately, for the petitioner, on 07.06.2007, Ministry of Finance, GOI, it appears, came around and approved the proposal for up-gradation of pay scale applicable to the post of Manager (Sales & Marketing) from Rs. 10000-15200 to Rs. 12000-16500.

3.7. On receipt of this approval, MHRD vide order dated 19.06.2007, conveyed the approval of the competent authority to NBT. As indicated above, NBT made the said proposal public vide its office order no. 241/2007, dated 06.07.2007. The office order, being brief, and pertinent to the case, is extracted hereinbelow:-

..In pursuance of the decision taken by the Competent Authority a post of Telephone Operator-cum-Receptionist in the pay scale of Rs. 4000-100-6000 under Non-plan has been abolished w.e.f. 19.06.2007 to meet the matching saving grant for the up-gradation of the post of Manager (Sales & Marketing) in the pay scale of Rs. 12000-16500.

This issues with the approval of the Competent Authority..

(emphasis is mine)

3.8. While the issue of up-gradation of pay applicable to the post of Manager (Sales & Marketing) was addressed with the issuance of NBT's office order 241/2007, it gave rise to the controversy with regard to the date of its applicability. This started a second spate of representations.

3.9. The petitioner, made a representation in this behalf on 10.07.2007, which was forwarded by NBT to MHRD vide communication dated 12.09.2007.

4. MHRD, in its letter dated 31.12.2007 conveyed to NBT that a clarification had been sought in that behalf from the Ministry of Finance, GOI, and that, the Department of Expenditure in the said Ministry had clarified that the benefit of higher pay scale could only be given prospectively.

4.1. In consonance with the above, vide memorandum dated 18.02.2008, it was conveyed to the petitioner that the benefit of the higher pay scale would be available to him only prospectively. It is important to note that this aspect is not adverted to by the petitioner in the writ petition.

4.2. The petitioner, however, nearly three years later, sought a redress of his grievance by filing a petition under Article 226 of the Constitution. The petition was filed on 11.02.2011. Notice in the writ petition was issued on 14.02.2011. Though the petition was admitted on the very first date and, therefore, put in the regular category; the matter was put back on the admission board upon an expedition order obtained in an early hearing application moved in that behalf.

Submissions Of Counsels

5. Arguments on behalf of the petitioner were advanced by Mr. O.P. Agarwal, while respondent nos. 1 and 2 were represented by Mr. Sunil Kumar. Mr. Nikhil Nayyar made submissions on behalf of respondent no. 3.

5.1. Mr. Agarwal, apart from drawing my attention to the facts, which have been set out hereinabove, emphasized the point that it took nearly ten years for the respondents to correct the anomaly in pay scales and, therefore, the petitioner could not be made to suffer by having the decision to upgrade the pay scale of the post of Manager (Sales and Marketing) implemented prospectively. Mr. Aggarwal said that since, the decision of the GOI, dated 07.06.2007, merely corrected the anomaly which, resulted in, placing the post of Manager (Sales & Marketing) in a higher replacement scale, without any higher responsibility/higher qualifications or even higher eligibility in service being fixed, the decision had to be given effect from either the date on which the petitioner joined the post i.e., 21.06.1997 or, from the date of his representation, that is, 06.11.1997. In support of his argument, the learned counsel relied upon the Department of Personnel and Training's O.M. dated 04.02.1992. The learned counsel for the petitioner also relied upon the judgments of the Supreme Court in the case of: Haryana State Minor Irrigation Tubewells Corporation and Others Vs. G.S. Uppal and Others, and Bharat Sanchar Nigam Ltd. Vs. R. Santhakumari Velusamy and Others, .

6. On the other hand, the learned counsels for the respondents, as indicated in the very beginning, submitted that the decision taken by GOI to upgrade the pay scale applicable to the post of Manager (Sales & Marketing) was not linked with the acceptance of the recommendations made by the 5th CPC. It was submitted that the decision was based on functional considerations. The learned counsel for the respondents emphasized the fact that merely because a merger of pay scales takes place as between a subordinate and higher post that by itself does not call for up-gradation of pay scales; which is, the edifice on which the petitioner claims that the decision to upgrade the pay scale should be given a retrospective effect.

6.1. The counsels for the respondents were thus, at pains to establish that up-

gradation in the pay scale had been brought about only upon NBT agreeing to surrender a live post.

6.2. The counsels for the respondents also drew my attention to the fact that even though the decision to, not accept the petitioner's claim for grant of up-gradation in pay scale with effect from June-November, 1997 was taken as far back as on 06.07.2007, the instant petition was not filed till February 2011 and hence, ought to be dismissed on the ground of laches alone. It was contended in this context that, submission of repeated representations by the petitioner, would not, give rise to a fresh cause of action in his favour. In this behalf, reliance was placed on the following judgments of the Supreme Court:- State of Orissa and Another Vs. Mamata Mohanty, and State of Tripura and Others Vs. Arabinda Chakraborty and Others, .

6.3. It was also argued that grant of pay scale is an executive action, which ordinarily courts ought not to interfere with as, it could cause a cascading effect creating several problems for the Government and other authorities. Reliance in this behalf was placed on the following judgments of the Supreme Court:- S.C. Chandra and Others Vs. State of Jharkhand and Others, and Union of India and others Vs. Makhan Chandra Roy, .

Reasons

7. Having heard the learned counsels for the parties and perused the record, it is quite clear that the decision of the Ministry of Finance, Department of Expenditure, GOI dated 07.06.2007 resulted in acceptance of the proposal made to it for up-gradation of pay scale applicable to the post of Manager (Sales & Marketing), NBT.

7.1. The acceptance of the proposal was preceded by the decision of NBT to surrender one live post of a Telephone Operator, in the pay scale of Rs. 4000-6000, which had become vacant on superannuation of the incumbent; thus, making it possible to provide for "matching savings" to enable up-gradation of pay scale appended to the post of Manager (Sales & Marketing) from Rs. 10000-15200 to Rs. 12000-16500. This aspect is clearly adverted to in NBT's letter of 20.04.2006.

7.2. As a matter of fact, even prior to this, the consistent stand of the Ministry of Finance, GOI was that up-gradation of pay scale in the post of Manager (Sales & Marketing), as suggested, would create further anomalies; and hence, NBT should consider re-structuring the cadre so as to reduce the number of levels in the hierarchal structure prevalent in NBT. This stand of the GOI, is reflected in letter dated 29th June/6th July, 2005.

7.3. The consistent stand of the GOI has been that, merely because, the feeder and promotion post in certain ministries and departments including autonomous institutions, such as the NBT, had been placed in an identical revised pay scales, that could not by itself, be an adequate justification for placing the promotion

post in a higher pay scale. Therefore, the consistent stand taken was that the affected cadres should be appropriately restructured so as to reduce the hierarchy in service which, according to the GOI, was the underlying theme, in the 5th CPC recommendations pertaining to merger of different pay scales. This view of the Ministry of Finance, GOI finds resonance in its O.M. dated 24.11.2000.

8. Having regard to the above, I am of the view that the decision of the Ministry of Finance, GOI to accept the proposal to upgrade the pay of Manager (Sales & Marketing), NBT from 10000-15200 to Rs. 12000-16500 prospectively, was taken, bearing in mind the ramifications, it would have vis-?-vis other departments and/or ministries. Though the recommendation of the 5th CPC was to merge different pay scales (which in this case, resulted in the merger of pay scale of Manager (Sales & Marketing) and Dy. Directors/Regional Managers), it could not necessarily be categorized (as is sought to be contended on behalf of the petitioner) as an anomaly which got corrected vide decision dated 07.06.2007. If the said decision is delinked from the decision of the 5th CPC (which evidently is the situation obtaining in the present case), then surely, the benefit of the decision can only be prospective and not retrospective. The fact that the approval to the proposal by the Ministry of Finance, GOI was given in the background of the fact that NBT decided to give up a live post of a Telephone Operator to provide matching savings, is a pointer in that direction. The office order no. 241/2007 dated 06.07.2007 which has been extracted hereinabove by me, substantiates this aspect of the matter. Therefore, the submission made on behalf of the petitioner that the up-gradation of pay scale from 10000-15200 to Rs. 12000-16500 in the post of Manager (Sales & Marketing) should be given effect from the date when the petitioner joined service i.e., 21.06.1997 or at least from the date, he made a representation i.e., 06.11.2007, cannot be accepted.

9. This apart, there is some merit in the submissions made on behalf of the respondents that the petition is barred by delay and laches in as much as NBT by its office order no. 240/2007 dated 06.07.2007 made it clear that the up-gradation of pay scale from Rs. 10000-15200 to 12000-16500, will be effective from 19.06.2007. Therefore, the cause of action, if at all, arose in favour of the petitioner on that date. Merely because the petitioner thereafter, made representations, which were ultimately rejected on 18.02.2008, would not give rise to a fresh cause of action. [See Union of India (UOI) and Others Vs. M.K. Sarkar,]. There is no explanation for the delay between 06.07.2007 and 18.02.2008, except that representations were made, which were pending.

9.1. It is trite to say that repeated representations and/or their rejection will not give rise to a fresh cause of action unless the aggravation is such, that it presents a case of continuing cause of action or recurring cause of action. Even if one were to accept that denial of relief of up-gradation in pay scale with retrospective effect i.e., from June/November 1997 gave rise to a recurring cause of action, there are gaps in the explanation of delay in filing the petition beyond

18.02.2008 when, the decision of the GOI dated 31.12.2007, declining such a request, was communicated to the petitioner by NBT. Pertinently, even after 18.02.2008, it took the petitioner a little less than three years to approach this court by way of the instant petition. The petitioner, has tried to explain the delay on the ground that he was temporarily transferred to Mumbai, and on account of illness of a relative in the family. These reasons by themselves do not explain the delay as according to the petitioner he was away from Delhi between 19.12.2008 and 03.05.2010. As indicated above, there is no explanation for delay between the period 06.07.2007 and 19.12.2008, and similarly for the time span between 04.05.2010 and February, 2011, even if one were to exclude from reckoning the period between 19.12.2008 and 03.05.2010.

9.2. Notably, the petitioner in prayer clause (b) seeks modification of office order no. 240/2007 dated 06.07.2007 to the extent that, it should be given effect either from 21.06.1997 or at least from 06.11.1997 and not from 19.06.2007 as indicated in the said order, forgetting that the order is passed by NBT, which is pivoted on the GOI decision of 31.12.2007. Pertinently, there is no challenge to the GOI order dated 31.12.2007 which rejected the claim made to give retrospective effect to up-gradation of pay scale. Unless, the said decision is challenged, the relief sought in the writ petition would clearly be inchoate.

10. Therefore, for the reasons given hereinabove, I find no merit in the petition. The petition is accordingly dismissed. The parties shall, however, bear their own costs.