
(2010) 05 DEL CK 0107

In the Delhi High Court

Case No : Writ Petition (C) No. 7379 of 1999

Tara Chand

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0107

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Venkat Subramaniam and S. Ganesh, for the Appellant; Gaurav Sharma, J.P. Karunakaran and Bosco K.T. for Respondent No. 2/IIT, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—Petitioner Tara Chand has assailed the Memorandum dated 25.11.1999 as also the subsequent communication dated 30.10.2000. Vide Memorandum dated 25.11.1999 the petitioner was informed that after having considered his representation dated 12.8.1999, he is given the pay scale of Rs. 3200-4900 while protecting his pay; further in case, he does not wish to continue as Lab Assistant he could opt to remain in Group D Attendant category in the pay scale of Rs. 4000-6000. The second communication dated 30.10.2000 informed the petitioner that he is placed in the pay scale of Rs. 3200-4900 with effect from 18.9.1998 while protecting his pay. Both these orders are the subject matter of the present writ petition.

2. The undisputed facts are as follows:

(i) Petitioner was appointed in the IIT, Delhi as Class IV Attendant on a temporary post for a period of two years with effect from 2.3.1977.

(ii) His services were confirmed on 18.12.1977.

(iii) Petitioner's service including all employees of Group D, C, B and A were

governed by the Recruitment and Career Development scheme for non academic staff i.e Group B,C and D (hereinafter referred to as "R & CD. Scheme").

(iv) Pursuant to R & CD. scheme an advertisement dated 5.3.1998 was issued by the IIT, Delhi. This advertisement was circulated amongst the Group D employees of the institute who had reached in the pay scale of Group C The advertisement categorically stated

The eligible employees will be considered for assessment by duly constituted assessment committees subject to availability of vacancies in the appropriate cadre of Group C entry level posts as per requirement/need of the Institute. There will be no change in pay on being appointed to Group C posts and appointment in Group C posts will be personal to such individuals.

(v) Petitioner was one such applicant.

(vi) Vide letter dated 18.9.1998 petitioner was informed that on the recommendation of the Selection Committee he had been designated as a Laboratory Assistant in the entry level Group C. This was along with other similarly placed employees. This communication further informed him that this designation would be personal to him and his pay would be protected. In this appointment letter dated 18.9.1998 his pay scale was shown as Rs. 4000-6000. He was shown at Sl.No.6. There were nine other persons who had been promoted along with him from Group D to Group C category.

(vii) On 30.7.1999, petitioner was informed that while protecting his pay in the category of Group C as an Assistant, the petitioner shall be placed in the pay scale 3200-4900. In case, he does not opt for coming to the scale of Lab Assistant he may choose to remain in Group D by having the same pay scale that he had had before being selected as a Lab Assistant.

(viii) On 12.8.1999, petitioner represented to the institute against this Memorandum dated 30.7.1999 which was rejected vide communication dated 25.11.1999. It was reiterated that petitioner had been giving the pay scale of Rs. 3200-4900 while protecting his pay as a Lab Assistant. He was again given option to remain as Group D attendant in the earlier pay scale of Rs. 4000-6000.

(ix) Aggrieved, petitioner has filed the present petition.

3. On 14.12.1999, this writ petition was disposed of with the direction that a fresh representation will be made by the petitioner raising his grievances that he is entitled to the pay scale of Rs. 4000-6000 as had been mentioned in his appointment letter dated 18.9.1998.

4. Reminder dated 7.1.2000 were issued by the respondent to the petitioner requesting him to present his representation in terms of the order of this Court dated 14.12.1999.

5. The subsequent representation dated 20.1.2000 of the petitioner was decided by the department by a detailed order dated 28.7.2000. It was stated that the

communication dated 18.9.1998 placing the petitioner at serial No. 6 for the post of Lab Assistant had wrongly mentioned his pay scale as Rs. 4000-6000 whereas the correct pay scale should have been Rs. 3200-4900/-which was the pay scale of the Lab Assistant in a Group C post. It was informed that this mistake in the communication dated 18.9.1998 had been pointed out by one Ram Bilas Paswan and on his representation this mistake had been noted. Accordingly, the memorandum dated 30.7.1999 was issued to the petitioner informing him that he was placed in the pay scale of Rs. 3200-4900 with further option to revert back in Group D in case he wants to opt pay scale of Rs. 4000-6000.

6. Order dated 28.7.2000 had been communicated to the petitioner on 30.10.2000 which is also subject matter for challenge in the present matter.

7. Contention of counsel for the petitioner is that admittedly Group C is a promotional post; petitioner had the normal human expectation that in the promotional avenue for which he had opted and had been selected he would also get a financial benefit and advantage in the pay scale; the department by placing the petitioner in the lesser pay scale of Rs. 3200-4900 has worked to the disadvantage of the petitioner. Accordingly, the prayers made in his petition be allowed and the impugned memorandum dated 25.11.1999 and the communication dated 30.10.2000 reiterating that he is placed in the pay scale of Rs. 3200-4900 be set aside.

8. The counter affidavit filed by the respondent has been perused. Respondent has countered the submissions of the petitioner. It is stated that the petitioner very well knew when he had applied to the post of Group C post pursuant to the advertisement dated 5.3.1998 that his personal pay would remain protected but he would be placed in the pay scale of Group C candidates.

9. The record supports the arguments and the stand of the respondent. Advertisement dated 5.3.1998 categorically states that there will be no change in the pay of the applicant on his being appointed to the Group C post and the appointment in the Group C post would be personal to such an individual. The petitioner had applied with full knowledge of this condition. The appointment letter dated 18.9.1998 has been perused. Ten candidates had been selected and appointed in the Group C category from their Group D status. The name of the petitioner figures at serial No. 6. Amongst the ten candidatures considered and selected only his pay scale has been mentioned as pay scale of Rs. 4000-6000. The fact that this is a typing mistake is clear from the preceding paragraph of this communication which inter alia reads as follows:

With reference to the applications received in response to the above referred advertisement and subsequent Test and Interview of the shortlisted Gp."D" employees, the Director on recommendations of the Selection Committee is pleased to designate the following Group "D" employees in the Group "C" post as mentioned against them with immediate effect as personal to them without any change in the pay and pay-scale but protecting the date of next increment.

10. This mistake had been pointed out to the department by a co-employee i.e. one Ram Bilas Paswan. The representation of Ram Bilas Paswan is dated 4.1.1999. It was then that the department became aware of their mistake. The fact that this was an error is further clear from the fact that in the case of all other nine employees who had been selected and promoted to Group C from Group D category, only against the name of the petitioner the pay scale had been mentioned as Rs. 4000-6000; the pay scale of all other employees who had also been promoted from Group D to Group C along with the petitioner were shown to be in the pay scale of Rs. 3050-4590. This error was corrected by a corrigendum and communication dated 30.7.1999.

11. It is also relevant to note that the petitioner had all-along been informed that in case he is aggrieved by the pay scale of the Group C employees he had option to revert back to his Group D status with the earlier scale of Rs. 4000-6000. Petitioner did not opt for that. Petitioner continued in the Group C category as a Lab Assistant. Thereafter in the course of the proceedings in the present writ petition the order dated 14.12.1999 was passed by this Court. Directions had been given to the department to consider afresh the grievances of the petitioner. On 28.7.2000 the department vide a detailed order considered the representation of the petitioner in terms of the order of this Court dated 14.12.1999. It was reiterated and informed to the petitioner that advertisement vide which he had opted to be selected in the Group C category had clearly endorsed that while protecting the pay of such applicants the appointment in such a category would be personal only to such individuals. All other candidates who had been selected in the Group C category along with the petitioner had been granted the pay scale of a Group C employee; this is evident from the appointment letter dated 18.9.1998. Pay scale against the name of the petitioner had inadvertently mentioned his pay scale as Rs. 4000-6000. This was rectified and duly informed to him with an alternate option of continuing to remain in the Group D category with earlier pay scale of Rs. 4000-6000 which the petitioner did not choose to opt for.

12. In these circumstances, it is clear that the grievances of the petitioner are not genuine; memorandum dated 25.11.1999 and communication dated 30.10.2000 by the department had only corrected their clerical mistake which had crept in in the appointment letter dated 18.9.1998. He was rightly as per R and C.D. rules, while placing him in the Group C category as Lab Assistant, given him pay scale which is applicable to the Group C category. The petitioner has been placed at par with his other co-employees. His pay is protected. It is also not a case where the advertisement seeking applications in the Group C category from the Group D employees is under challenge.

13. Orders impugned are legal and clearly within the parameters of the policy and rules of the department. There is no merit in this writ petition; it is dismissed. No orders as to costs.