
(2008) 05 DEL CK 0187

In the Delhi High Court

Case No : Writ Petition (C) No. 18047 of 2005

Tarif Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-05-2008

Acts Referred:

Citation : (2008) 105 DRJ 545

Hon'ble Judges : Sanjay Kishan Kaul, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; Ehraz Zafar, for the Respondent

Judgement

Mool Chand Garg, J.—The petitioner joined BSF as a Constable in the year 1967. He was detailed for one year training for the course of Veterinary Stockman at Jaipur. After completing one year's training, he was appointed as Stockman in the rank of Head Constable by the BSF vide order dated 8th December, 1982 in the pay scale of Rs. 225-308. Even though as per the Fourth Pay Commission, the pay scale for the post of Stockman/Stock Assistant/Vaccinator/Milk Recorder was prescribed as Rs. 975-1540, but the petitioner was given the pay scale of Rs. 950-1400 which was also the pay scale admissible to the post of Constable.

2. On 6th June, 1995, the petitioner was designated as Head Constable (Compounder Veterinary) and was given the pay scale of Rs. 975-1660. According to the petitioner, both as Stockman and Compounder, the rank of the petitioner was that of Head Constable and as such there was no promotion involved. It is also stated by him that even as per the new Recruitment Rules floated in 2003, Head Constable (Stockman) is not a feeder post for Head Constable (Compounder Veterinary) and, therefore, it is contended that both the posts used to be and are still one and the same post as per Recruitment Rules, 2003 as also that the essential qualification for recruitment to both the posts is the same.

3. It is submitted that as per the recommendations of the Fifth Pay Commission,

the Central Government revised the pay scale of both Head Constable (Stockman) and Head Constable (Compounder Veterinary) as Rs. 4000-6000 but while implementing the aforesaid pay scale, the possession of two year certificate course was made mandatory and those who were not possessing the two-year certificate had been given the replacement scale of Rs. 3200-4900. Since the petitioner was holding only one-year certificate, he was also given the pay scale of Rs. 3200-4900 as a replacement pay scale.

4. It is the case of the petitioner that despite waiver of the condition of two-year certificate course for existing employees by the Department of Animal Husbandry (Government of Delhi), the benefit-of the pay scale of Rs. 4000-6000 was not extended to the petitioner whereas the said pay scale was made admissible to all existing compounders/stockmen from 1st January, 1996, but the replacement pay scale given to the petitioner and other BSF personnel is that of Rs. 3200-4900 with effect from 1st January, 1996 instead of Rs. 4000-6000 even though the petitioner joined as Stockman in 1982 when only one-year certificate course was in vogue. Thus, it is submitted that, the petitioner has been discriminated against.

5. The petitioner thus claims parity in the pay scale by contending that he should have been granted the pay scale of Rs. 4000-6000 with effect from 1st January, 1996 instead of pay scale of Rs. 3200-4900.

6. It is also submitted that since the petitioner was stagnating in the post of Head Constable since 1982, he was granted the benefit of Assured Career Progression Scheme while granting the pay scale of Rs. 5000-8000 with effect from 9th August, 1999. It is pleaded that even at this time, he was discriminated inasmuch as the Havaladar, Veterinary of Indo Tibetan Border Police were granted the pay scale of Rs. 5500-9000 vide order dated 3rd April, 2002 with effect from 9th August, 1999. It is further that the BSF and the ITBP are both Armed Forces of the Union and the veterinary persons of both the forces perform the same duties but given different pay scales i.e. (Rs. 5500-9000 to ITBP personnel and Rs. 5000-8000 to BSF personnel) which is discriminatory and violative of the principles of equal pay for equal work". Thus, the petitioner also claims the pay scale of Rs. 5500-9000 since 9th August, 1999 instead of the pay scale of Rs. 5000-8000 from the said date.

7. The third grievance made by the petitioner is about withdrawal of the benefit of ACP made admissible to him by conferring the pay scale of Rs. 5000-8000 as ACP with effect from 9th August, 1999 for the reason that the said pay scale was admissible to those S.I.s who were possessing B.Sc degree with biological science and those S.I.s who did not possess the degree were given replacement of Rs. 4500-7000 and for the persons who were not entitled to the pay scale of Rs. 5000-8000 like the petitioner, a recovery of a certain amount could be made which in the petitioner's case was a sum of Rs. 82,625/-, out of the gratuity of the petitioner after he superannuated. The said decision was communicated to the petitioner vide their letter dated 22nd September, 2004. Further, the grant of

ACP Scheme is also disputed by pleading that the petitioner was promoted on 6.6.95 when he was granted pay-scale of Rs. 975-1660 and thus was not entitled to the benefit of ACP Scale also.

8. By way of this writ petition, the petitioner has claimed the following reliefs:

(i) The petitioner be granted pay scale of Rs. 4000-6000 instead of the pay scale of Rs. 3200-4900 with effect from 1st January, 1996 and further be granted the pay scale of Rs. 5500-9000 with effect from 9th August, 1999 instead of Rs. 5000-8000; AND,

(ii) That the respondents be restrained from recovering the sum of Rs. 82,625/- out of the gratuity of the petitioner being the benefit of the enhanced pay scale granted to the petitioner on the ground of his stagnation in the same pay scale for number of years and having not been granted any promotion.

9. The respondents, have contested the writ and opposed the prayer made by the petitioner on the ground that the pay scale of Rs. 4000-6000 was not admissible to the petitioner inasmuch as, he was not having the requisite qualification which were essential for granting the pay scale of Rs. 4000-6000 instead of Rs. 3200-4900. It is also stated that since the petitioner was not having the required educational qualification which would have made him admissible to the pay scale of Rs. 5000-9000, he was not entitled to the benefit of ACP Scheme. As regards the pay scale of Rs. 5500-9000, it is submitted that it was a promotional scale which was in any case not admissible to the petitioner. In relation to the recovery sought to be effected from the petitioner, it is submitted that benefit of ACP was granted to the petitioner inadvertently and therefore there was nothing wrong in effecting recovery of the amount paid to the petitioner because of a mistake.

10. We have considered the rival submissions. A few facts are apparently clear from the pleadings of the parties which can be enumerated for the sake of reference are:

(a) That the petitioner though joined as Constable in 1967, but was designated as "Veterinary Stockman" in the year 1982 after he completed one year course of Veterinary Stockman" from Jaipur but the pay scale which was made admissible to him even at that time was the same pay scale which was granted to him at the time of his appointment as Constable. Thus, at that time, there was no promotion given to the petitioner.

(b) Similarly, when on 6th June, 1995, the petitioner was designated as Head Constable (Compounder Veterinary) and was given the pay scale of Rs. 975-1660 it was nothing else but the same pay scale of which replacement pay scale was 3200-4900. Thus, virtually, the petitioner was not given any promotion and, therefore, he continued stagnating in the pay scale of Rs. 950-1400/975-1660 right from 1982 which both had the same replacement pay scale of Rs. 3200-4900 as per the Fifth Pay Commission.

11. The petitioner was also not entitled to the benefit of the pay scale of Rs. 4000-6000 as a replacement pay scale inasmuch as there is nothing on record which may go to show that the said pay scale was made admissible to the counter parts of the petitioner by the BSF. Merely because the Government of Delhi extended those benefits even to those persons who were having one-year certificate course later on though initially the requirement was of two-year certificate course in addition to other essential qualifications would not give parity to the petitioner unless the said pay scale was accepted and adopted by the Central Government even in respect of para-military organizations.

12. As far as the higher pay scale of Rs. 5500-9000 made admissible to the ITBP personnel is concerned, we do not find that there is any parity in the case of the petitioner and those who had been made admissible to the pay scale of 5500-9000 which was, in fact, a promotional scale whereas according to the petitioner has not been given any promotion so far. Thus, in these circumstances, we agree with the respondents that the petitioner is neither entitled to the pay scale of Rs. 4000-6000 nor the pay scale of Rs. 5500-9000. Even otherwise the claim of parity of pay-scale cannot be entertained on the principles of delay and laches in as much as the claim pertains to the year 1996 and it has been claimed by way of writ petition only now.

13. However, we do not "find any justification for the respondents to withdraw the benefit of the ACP Scheme granted to the petitioner inasmuch as, since 1982, the petitioner was not given any higher pay scale or promotion. Even if the pay scale of Rs. 5000-8000 was not admissible to the persons holding requisite qualification as was being held by the petitioner, it would still not deprive him of that scale because that being the higher scale was granted to him at the time of granting him the benefit of ACP Scheme. The fact that the petitioner was granted the pay-scale of Rs. 5000-8000 as ACP Scheme is also clear from the letter dated 9.5.2001 which goes to show that there were no promotional avenues available for the post of HC/Stockman/Lab Tech, having the pay-scale of 3200-85-4900 and from the order dated 16.1.2003 (Annexure P12) fixing the pay-scale for Tarif Singh (the petitioner) in the pay scale of 5000-150-8000 in respect of his earlier pay-scale i.e., 3200-85-4900. The same is reproduced for the sake of reference:

Office of The Commanding Officer NTCD, BSF Tekanpur No. 163/Estt/NTCD/03/327-34 Dated 16 Jan 2003

In accordance with BSF Academy I O N No. 1806/5/E-3/ACPS/846 dated 16.1.201, read with the board proceedings approved by the IG/Di-rector BSF Academy and the clarification No. 32 of office memo No. 35034/1/97/Estt (D) (Vol.4) dated 10 Feb" 2000, the pay scale of serving/retired HC/Compounder of this Centre are fixed as under giving them the benefit of ACP Scheme as shown against their names.

S. No.	Rank	Financial Scale	of pay	Pay scale/pay	Pay scale/pay	Name
	upgradation/date	being received	on grant of	first on grant of	on the grade	on

financial scnd financial the grade of upgradation upgradation financial upgradation 1. 70055771 On 9.8.99 one 3200-85-4900 In pay scale Rs. 5150 from HC/Vet 4305 500-150-8000 1.8.2000 Rs. Compdr Rs. 5000, from 5000, from Mahendr Singh 9.8.99 9.8.99 Rs. 5300 from 1.8.2002 the date next annual increment shall be 1.8.03. 2. 670211027 On 9.8.99 one 3200-85-4900 - do- -do- HC/Vet/Compdr 4135 Tanrrit Singh 3. 691650018 On 9.8.99 two 3200-85-4900 In pay scale In pay scale HC/Vet 4645 5000-140-8000 5500-175-9000 Compdr Rs. 5500, from Rs. 5500, from Dungar Singh 9.8.99 9.8.99 Rs. 5675 Now retired from 1.8.2001 individual had retired w.e.f. 30.8.2001. 1 Note: This pay fixation is provisional and on approval of the Recruitment Rules, re-fixation in accordance thereof shall be considered final. Likewise in respect of personnel as serial No. 3 above is revised pension paper may be sent on finalization of pay scale after receipt of approved Recruitment Rule

Sd/-

(Dr Sardari Lal)

v.

Commanding officer NTCD

In view of the aforesaid stand of the respondent i.e., pay-scale which was made admissible to the petitioner by way of Assured Career Promotion Progression was not admissible to him does not stand to reason. Therefore its recovery cannot be sustained that also without giving him an opportunity of hearing.

14. We do not find anything on record which might go to show that the petitioner was ever given any show cause notice or an opportunity of being heard with regard to the action of the respondents to withdraw the benefits already granted to the petitioner. At this juncture, we may also observe that in number of cases, this Court has set aside such action of the respondents where the respondents sought to withdraw the benefit of ACP Scheme. A reference can be made to the orders passed by a Division Bench of this Court of which one of us (Sanjay Kishan Kaul, J.) was a member vide order dated 3rd October, 2007 in WP(C) No. 7280/2007 as well as in WP(C) Nos.5291/2006,11543-52/2005 and 18620-22/2005.

15. Thus taking all the aforesaid facts into consideration, we hold that while the petitioner is not entitled to enhanced pay scale as claimed by him, at the same time, the respondents are also not entitled to recover the benefit of the ACP granted to him after a period of about 17 years stagnation in the same pay scale. Thus, the purported action of the respondents to deduct the sum of Rs. 82,625/- from the gratuity of the petitioner as per the letter dated 22nd September, 2004 cannot be sustained and therefore the respondents are liable to refund the amount already deducted and prohibited from recovery of it any further.

16. We may also observe that insofar as the Recruitment Rules which came into

being in 2003 is concerned, about which a reference has been made by the respondents, to deny the benefit of higher pay scale to the petitioner, it may be said that the said Rules came into being subsequently and cannot

be given effect to retrospectively and as such those Rules have no applications to the facts of the case.

17. Thus, a writ of mandamus is issued in favour of the petitioner and against the respondents directing them (i) not to recover/deduct any further amount from the gratuity of the petitioner pursuant to their letter dated 22.9.2004 and (ii) to refund the amount already recovered from the petitioner within two months of the passing of this order. No further relief is granted to the petitioner.

18. The writ petition stands disposed of accordingly. Parties are left to bear their own costs.