

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) Nos. 20862/2005, 446/2006 & 3219/2006

NIRMAL SINGH BOONGA Petitioner in WPC 20862/2005
M.P.VERMA Petitioner in WPC 446/2006
PRAKASH CHAND Petitioner in WPC 3219/2006
Through Ms. Jyoti Singh, Advocate.

versus

DIR.INDIAN INSTITUTE OF TECHNOLOGY Respondent
Through Mr. Maninder Singh & Mr.T.Singhdev,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
22.04.2008

1. By this common Order, Writ Petition (Civil) Nos. 20862/2005, 446/2006 and 3219/2006 are being disposed of.
2. The petitioners herein have retired as Foreman in Indian Institute of Technology, Delhi (hereinafter referred to as IIT, for short).
3. In 1979, the petitioners were appointed as Mechanic-A in the pay scale of Rs.**380-560**/. With effect from 1st July, 1982, post of Mechanic-B carrying the pay scale of Rs. 330-480/- was abolished/phased out and the employees in the said grade were treated as Senior Mechanics in the pay scale of **Rs. 380-560**/. As a result, with effect from 1st July, 1982, both the posts of

Mechanic-B and Mechanic-A came to be known as Senior Mechanic carrying the pay scale of Rs.380-560/-.

4. In 1983, the respondent-IIT introduced 'Career Personal Promotion Scheme, 1983' (hereinafter referred to as CPP Scheme, for short) for their non-academic staff. As per the CPP Scheme, Senior Mechanics including Mechanic-B were entitled to promotions as Assistant Foreman in the pay scale of Rs.425-800/- on completion of eight years of service. This period of eight years included the time spent in the post of Mechanic-B in the pay scale of Rs.330-480/-. I may also note here para 8 of the CPP Scheme, 1983 which reads as under:-

“8. Some posts have been eliminated with or without replacements. Where the posts have been eliminated with replacement, and their existing scales of pay lie between two scales of the new ladder, the existing incumbents have been proposed to be placed in the next higher post/scale available in the ladder. A few existing posts have also been upgraded under the new scheme. Considering that the new scales in all the categories in which the existing incumbents are to be placed are not identical as per definition given above, the individuals falling under these categories are proposed to be placed in the new scales as per following criteria:

If the new scales are higher than that of the old posts in respect of the minimum or the maximum, or both, the individuals should be placed in the new scales after he/she has reached the minimum of the new scale and shall be required to render combined service for 7 years in the old and new scale for the purpose of promotion to the next higher post/scale

available in the ladder. The placement in the higher scale will not be counted as a promotion. Any hard case of a senior person, being superceded by a junior person can be considered on merit by the assessment authority.”

5. Reading of Clause 8 discloses that where certain scales were merged and non academic staff were granted higher/new pay scales, the period of service in the earlier pay scale was to be counted and combined for the purpose of getting the benefit under the said Scheme. Employees who were earlier working as Mechanic-B and w.e.f. 1st July, 1982 got merged/designated as Senior Mechanics and were being paid higher pay scales, were entitled to the benefit of the period of service rendered as Mechanic-B for availing benefit under CPP Scheme, 1983.

6. As a result of the CPP Scheme, several Senior Mechanics who were earlier Mechanic-B were promoted to the post of Assistant Foreman superseding Mechanic-A, who were after 1st July, 1982 were also designated as Senior Mechanics. To deal with this anomaly, a Committee was formed and as per the report dated 9th May, 1989, the following recommendation was made:-

“....The Committee recommends that Mechanic A, who have been placed in the scale of 425-800 in order to bring at par with their juniors may be assessed under the CPP for the next scale from the date of their initial appointment as Mechanic A without giving any designation to them.”

7. The said recommendation was later on accepted pursuant to an agreement between the employees-union and the management.

8. As a result of the said agreement and in view of the recommendation of the Committee, Senior Mechanics who earlier held the post of Mechanic-A got promoted to the post of Assistant Foreman in the pay scale of Rs.425-800/- w.e.f. the dates when their juniors, who were earlier Mechanic-B were promoted. Orders in this regard were passed sometimes in the year 1987 w.e.f. 1st July, 1985 and in September, 1991 to give effect to the agreement dated 23rd February, 1990 accepting the recommendation of the Committee. As already mentioned earlier, the recommendation of the Committee was accepted. The net effect thereof was that Mechanic-A who were designated as Senior Mechanics and who were subsequently promoted as Assistant Foreman in the grade of Rs.425-800/- were assessed under the CPP Scheme, 1983 from the date of their initial appointment as Mechanic-A.

9. The CPP Scheme, 1983 ceased to exist and no scheme was in operation from 1986 till 1993. In the meanwhile, the petitioners vide Office Order dated 3rd August, 1990 were promoted to the post of Assistant Foreman specifically stating that the promotion was subject to the terms and conditions of CPP Scheme, 1983 and few terms and conditions for promotions were also stipulated. These are as under :-

“1. These promotions are made against

supernumerary posts as per ladders provided in the Scheme.

2. Persons promoted to the next higher post/scale under these Rules will have no claim for seniority in the higher post. Appointments to regular vacancies from supernumerary positions on the same scale will not be a matter of right. Regular vacancies will be filled according to recruitment rules and subject to fulfillment of qualifications, experience, etc. Existing recruitment rules which provide only for seniority stand modified to include principles of selection.

3. The promotees under the Personal Promotion Scheme shall continue to discharge whatever duties and responsibilities assigned to them in the previous post in addition to any other duties or responsibilities that may be assigned to them on occupying the supernumerary post.

4. The pay on promotion will be fixed under Fundamental Rules separately.”

10. The petitioners did not challenge and question the said terms and conditions mentioned in the Order of promotion dated 3rd August, 1990 and accepted the same. The petitioners, therefore, have accepted the fact that they were promoted from the post of Mechanic-A or Senior Mechanics to Assistant Foreman in the pay scale of Rs.425-800/-.

11. In 1993, the respondent-IIT framed another Scheme known as *Recruitment and Career Development Scheme For Non-academic Staff (B, C and D)*(hereinafter referred to as Scheme, 1993, for short). The said Scheme provided for promotion on the basis of recruitment at entry level posts and also selection within the group. For the purpose of selection within the group one of the eligibility criteria fixed for the staff members was as under :-

“(2) Selection within a Group

Eligibility : For selection within a group the staff member must fulfill the following requirements:

- (i) He must have served continuously in the present scale and post for atleast 8 years (excluding any period of ‘Dies-non’).”

12. As per the above criteria, two conditions had to be satisfied simultaneously : firstly, the staff member must have continuously served on the pay scale for a period of eight years and secondly, he should have also held a post for a period of eight years, to be eligible for selection within a group. After the aforesaid Scheme was introduced in 1993, the petitioners on completing eight years in the pay scale of Assistant Foreman and on the post of Assistant Foreman were promoted as Foreman. At this stage also, the petitioners did not approach this Court by relying upon the Agreement or claiming that the Agreement dated 23rd February, 1990 has been violated. The letters/office order dated 3rd August, 1990 were not challenged or questioned. They may have made representations but the same alone cannot explain the delay from 1993 till 2005/2006, when the present writ petitions were filed.

13. On 1st August, 2006 a new Scheme namely, Recruitment and Career Progression (hereinafter referred to as Scheme, 2006) was notified by the respondent-IIT. The said Scheme, 2006 envisaged two assured upward

movement/promotions in a career of an non-academic employee of the respondent. The first promotion/upward movement was to be allowed after completion of 12 years of regular service and the second promotion/upward movement was to be allowed after a period of 12 years regular service from the date of first promotion/upward movement subject to fulfillment of the prescribed conditions and the qualifying prescribed assessment. It is the contention of the learned counsel for the petitioners that the petitioners are entitled to the benefit of the said Scheme, 2006 as they have been granted only one promotion/upward movement to the post of Foreman and the promotion/upward movement from the post of Senior Mechanic/Mechanic A to Assistant Foreman was merely upgradation of pay scale and not a promotion/upward movement. Learned counsel contends that employees in the post of Mechanic-B in terms of Clause 8 of the CPP Scheme, 1983, were granted benefit of service in the said post and their upgradation from pay scale of Rs.330-480/- to Rs. 380-560/- and therefore their case and appointment as Assistant Foreman in pay scale of Rs.425-800/- cannot be treated as a promotion/upgradation.

14. I do not find merit in the contention of the learned counsel for the petitioners and the same cannot be accepted. The employees who were working as Mechanic-B were granted benefit in terms of Clause 8 of the CPP Scheme, 1983. The said Scheme was a complete code in itself. The

employees working as Mechanic-B got benefit of Clause 8 on phasing out/abolition of the post of Mechanic-B. They became Senior Mechanics or equal to Mechanic-A in 1982. With a view to remove anomalies and to give benefit to persons/employees who were earlier working as Mechanic-A and clubbed with Mechanic-B in the re-designated post of Senior Mechanic, Mechanic-A were promoted as Assistant Foreman from the date their juniors Mechanic-B were promoted. It may be noted here that the post of Mechanic-A/Senior Mechanic was not phased out or abolished unlike the post of Mechanic-B which was phased out and abolished. It cannot be said that promotion from the post of Senior Mechanic to Assistant Foreman was not upgradation or promotion. Even in the case of Mechanic-B, who came to be re-designated as Senior Mechanic, promotion to the post of Assistant Foreman was an upgradation and promotion to the next higher post. The petitioners, therefore, got the first promotion when they became Assistant Foreman from the post of Senior Mechanic/Mechanic-A. It is entirely irrelevant how and why the promotion was made. The fact that they were promoted as Assistant Foreman because their juniors were promoted does not make any difference or effect the nature of their promotion. Thereafter, the petitioners were promoted to the post of Foreman. This was their second promotion. In view of the above I do not think that the petitioners can get the benefit of Scheme, 2006 because they have already availed of two

promotions/upgradations i.e. from Senior Mechanic to Assistant Foreman and from Assistant Foreman to Foreman.

15. I may also note here that the challenge to the 1983 Scheme and the 1993 Scheme and the manner in which the said Schemes were implemented is highly belated and bad for laches. The petitioners cannot be permitted to challenge and go into the question of the nature of the Schemes or its implementation in Writ Petitions which were filed in 2005-2006. The 1983 Scheme was a specific time bound Scheme which lapsed in 1986. Anomalies pointed out were rectified and orders were passed. The petitioners accepted the appointment orders which were passed in the year 1990 without challenging the same. Petitioners have not questioned the validity of 1983 Scheme or Clause 8 thereof in the present Petitions as well. Having accepted the implementation, the petitioners after a lapse of more than 15 years cannot set the clock back and claim that their promotion as Assistant Foremen should be regarded as a mere increase in pay scale and not a promotion. As already stated above, under the 1993 Scheme the requirement was two fold, namely, eight years of service in the pay scale and on the post. I am not inclined to go into the question of implementation of the 1983 and 1993 Schemes at this stage in writ petitions filed in 2005-2006.

The Writ Petitions are accordingly dismissed.

SANJIV KHANNA, J.

APRIL 22, 2008

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