

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

+ **W.P. (C.) No.9115/2009**

% **Date of Decision: 15.02.2010**

Noel Sudhakar Singh Petitioner
Through Mr.Sameer Kulshreshtha, Advocate

Versus

Union of India & Others Respondents
Through Mr.R.V. Sinha and Mr.R.N. Singh,
Advocates for respondent No.1.
Mr.Ravi Sikri and Mr.Ayushya Kumar,
Advocates for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner/original applicant challenges the order dated 2nd June, 2008 passed in OA No.1567 of 2007 titled Shri Noel S. Singh v. Union of India & Others dismissing his petition. The petitioner had filed an original application before the Central Administrative Tribunal, Principal Bench, praying inter alia for granting the pay scale of Rs.6500-10500 with effect from 1st January, 1996 and for granting 2nd financial up-gradation under ACP Scheme on completion of 24 years of service with effect from 1st June, 2001 besides claiming arrears of pay

from 1st June, 1977 to 7th January, 1980 on the ground that though he had been selected for the post of laboratory technician, however, he was appointed as laboratory assistant.

The petitioner had submitted that he is working as Technical Assistant in National Jalma Institute for Leprosy and other Micro-Bacterial Diseases at Agra. He asserted that though he had applied pursuant to advertisement dated 1st June, 1977 for the post of Laboratory Technician, however, he was appointed as a Lab Assistant pursuant to appointment letter dated 22nd April, 1977 in the lower scale of Rs.260-430. The grievance of the petitioner is that he should have been appointed as Laboratory Technician in the scale of Rs.380-560 from 1st June, 1977.

The petitioner had pleaded that though he should have been appointed as Laboratory Technician but he was illegally appointed as Laboratory Assistant which he accepted as he was searching for employment and on account of verbal assurances given by the Director of CJIL.

The petitioner worked on the post of Laboratory Assistant with effect from 1st June, 1977 and was appointed to the post of Laboratory Technician with effect from 8th January, 1980.

The petitioner was further promoted as Technical Assistant (Laboratory) with effect from 30th October, 1987 through DPC in the pay scale of Rs.1400-2300.

One of the grievances of the petitioner is that an order dated 12th October, 1990 was issued by Indian Council for Medical Research for all its permanent institutes/centers for granting up-gradation in the next higher grade of those technical employees of Group B, C and D who had completed seven years of regular service. Though other employees were upgraded by order dated 20th December, 1990, however, the petitioner was denied this one-time cadre scheme under which the petitioner was entitled for the next higher scale of Rs.1640-2900 (revised 5500-9000).

On implementation of pay scale of Fifth Central Pay Commission, pay scale of Rs.1350-2200 (Laboratory Technician) and pay scale of Rs.14700-2300 (Technical Assistant) were merged and revised scale of Rs.4500-7000 were given with effect from 1st January, 1996 by order dated 17th October, 2000 and, therefore, petitioner was put in the pay scale of Rs.5000-8000. According to the petitioner, he was to be given the pay scale of Rs.6500-10500 in the hierarchy for the nine years on the post of Technical Assistant since 30th October, 1987. The petitioner, therefore, made representation dated 22nd February, 2002 to grant the pay scale of Rs.6500-10500 with effect from 1st January, 1996.

According to the petitioner, even the scale of Rs.500-8000 was rolled back and was withdrawn by order dated 28th January, 2005 and order of recovery of the excess pay and allowances was proposed and thereafter revised pay scale of Rs.5000-8000 in place of Rs.4500-7000 was given to all Technical Assistants (Lab Technician, Electrician and PMW) with effect from 1st January, 1996. The petitioner also claimed second financial up-gradation under the Assured Career Progression Scheme on completion of 24 years of service with effect from 1st June, 1977. He claimed that he is entitled for second financial up-gradation under ACP with effect from 1st June, 2001 as he was appointed as a Laboratory Technician and he had been granted only one promotion to the post of Technical Assistant.

The petition was opposed by the respondents contending inter alia that the petitioner has already got two promotions from Laboratory Assistant to Laboratory Technician and from Laboratory Technician to Technical Assistant and, therefore, he is not entitled for second up-gradation under assured career progression scheme on completion of 24 years of service. Regarding rolling back of the pay scale, it was submitted by the respondents that the entire Indian Council for Medical Research pay scales were rolled back by a special order of Government of India and granted again later on as per the approval by the Government. The respondents further clarified that at the time of implementation of recommendation of Fifth Central Pay Commission,

the applicant was in the pay scale of Rs.1400-2300 which was revised to Rs.4500-7000 and the petitioner was given Part B scale of Rs.5000-8000 with effect from 1st September, 2005. These scales were earlier rolled back as they were not approved by the Ministry of Finance and after they were approved on 1st September, 2005, the implementation was done in the entire organization.

The respondent categorically denied that the petitioner at the time of appointment was given verbal assurance that though his selection was to the post of Laboratory Technician, however, he should join as Laboratory Assistant and soon he would be appointed to the post of Laboratory Technician.

The respondents also clarified that the petitioner was promoted from Laboratory Assistant to Laboratory Technician after following the proper procedure and through regular Departmental Promotion Committee. Therefore, the first promotion of the petitioner was from Laboratory Assistant to Laboratory Technician and his second promotion was from Laboratory Technician to Technical Assistant on 30th October, 1997, and, therefore, the petitioner is not entitled for any up-gradation under the ACP scheme.

The Tribunal has considered the appointment letter dated 22nd April, 1977 which is for the post of Laboratory Assistant and not for

Laboratory Technician. Learned counsel for the petitioner is unable to produce anything to show that the petitioner was in fact appointed to the post of Laboratory Technician and not to the post of Laboratory Assistant. Merely on the bald allegation that there was no post for Laboratory Assistant and the alleged verbal assurance alleged to have been given by the Director of CJIL and the petitioner had joined as laboratory assistant though he was selected to the post of laboratory technician, is not sufficient to hold that the petitioner was appointed to the post of Laboratory Technician and not to the post of Laboratory Assistant. The appointment letter of the petitioner in 1977 is for appointment to the post of laboratory assistant and any contrary plea cannot be accepted now.

Learned counsel for the petitioner is also unable to deny that in 1980, the petitioner was appointed to the post of Laboratory Technician pursuant to consideration and promotion by DPC. Therefore, the plea of the petitioner that he was appointed as Laboratory Technician and was not promoted from Laboratory Assistant to Laboratory Technician cannot be accepted and the finding of the Tribunal to this effect cannot be faulted.

This has not been denied that later on the petitioner was promoted from Laboratory Technician to Technical Assistant. In the circumstances, the petitioner had been given two promotions, therefore,

he is not entitled for any up-gradation under Assured Career Progression Scheme and the findings of the Tribunal in this regard cannot be interfered with.

Regarding not granting one-time cadre review as the petitioner had not fulfilled the eligibility criteria of seven years on the post of Technical Assistant, no ground has been made out by the learned counsel for the petitioner and therefore the order of the Tribunal also cannot be faulted for not granting one time cadre review to the petitioner.

Regarding granting the pay scale of Rs.5000-8000 with effect from 1st September, 2005, the learned counsel for the petitioner is unable to make out any cogent ground for grant of that pay scale earlier. This has not been disputed that earlier the pay scale was granted without the approval of the Ministry of Finance and therefore it was rolled back not only for the petitioner but for the entire organization and after the proper approval it has been granted with effect from 1st September, 2005.

In the circumstances, there are no grounds to interfere with the order of the Tribunal. There is no such illegality or irregularity which is to be corrected in exercise of jurisdiction by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India nor the

petitioner is entitled for any relief. The writ petition, in the facts and circumstances, is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

February 15, 2010

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MOOL CHAND GARG, J.