

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on 12.03.2012

+ **W.P.(C) 1518/2011**

HARSH VARDHAN SHARMA

... Petitioner

versus

UOI AND ORS.

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sachin Chauhan

For the Respondent Nos.2 to 4 : Ms Heena Takiar and Mohd. Noorullah

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED (ORAL)

1. This writ petition is directed against the order dated 10.02.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 3403/2009 whereby the petitioner's said Original Application was dismissed. The petitioner had earlier filed an Original Application being OA No. 2234/2009 wherein he had claimed that his representations which had been made to the respondents from time to time had not been taken heed of. The representations were in connection with the petitioner's claim that he be granted a pay-scale of Rs.5500-9000(pre-revised) from the date of his initial appointment. It may be pointed out that this scale is given to persons in the post of Inspectors (Finger Print). The petitioner, however, had been appointed as an Assistant Sub-Inspector(ASI Finger Print).

2. The Tribunal by its order dated 26.08.2009 disposed of OA No.2234/2009 by directing that the respondents should decide the representation made by the petitioner. It was also directed that in case the respondent did not agree with the

claim made by the petitioner, the respondents should pass a detailed and speaking order giving reasons for arriving at that conclusion.

3. Subsequent to the said order passed by the Tribunal on 26.08.2009, the representation of the petitioner was considered by the Commissioner of Police and he passed a speaking order dated 29.10.2009 rejecting the claim of the petitioner.

4. The petitioner, being aggrieved by the said order dated 29.10.2009 preferred the said OA No.3403/2009 in which the impugned order dated 10.12.2009 has been passed.

5. The contention of the learned counsel for the petitioner before us is that the petitioner was undoubtedly working in the post of ASI (Finger Print) but since he was functioning as an “Expert”, which, as per the Punjab Finger Print Manual, signified an officer of a rank not lower than a Sub-Inspector of Police attached to the Finger Print Bureau, the petitioner was entitled to the pay-scale of Sub-Inspector (Finger Print).

6. The learned counsel for the petitioner drew our attention to Clause 1 (8) of the part-I - “Finger Print System” of the said manual. The said sub-clause (8) reads as under:-

“(8) “Expert” means an officer of not lower rank than a Sub-Inspector of Police attached to the Finger Print Bureau who has worked as a technical hand (including training) for a period of not less than three years and has thereafter, passed the prescribed examination conducted by the All India Board for the examination of Finger Print Experts, constituted by the Ministry of Home

Affairs, Government of India and obtained a certificate of proficiency as an “expert”.”

7. A plain reading of the said sub-clause (8) makes it clear that before a person can be regarded as an “Expert” under the said Manual, he must possess the following qualifications:-

(i) He must be an officer of not lower rank than a Sub-Inspector of Police attached to the Finger Print Bureau;

(ii) He must have worked as a technical hand (including training) for a period of not less than three years;

(iii) He must have passed the prescribed examination conducted by the All India Board for the examination of Finger Print Experts, constituted by the Ministry of Home Affairs, Government of India and

(iv) He must have obtained a certificate of proficiency as an “Expert”.

8. Unless and until all conditions are satisfied, an officer cannot be regarded as an “Expert” under the said Manual. Insofar as the petitioner is concerned, it is an admitted position that he is not an officer of the rank of the Sub-Inspector and, therefore, the very first condition remains unsatisfied. It may be pointed out that the petitioner has indeed passed the prescribed examination and even has the said certificate as indicated in the said sub-clause (8). The learned counsel for the petitioner also submits that the petitioner has the requisite three years service as a technical hand. However, admittedly, the petitioner is an officer of a rank lower than that of a Sub-Inspector of Police attached to the Finger Print Bureau.

Consequently, the petitioner does not fulfil the criteria for being regarded as an “Expert”, as contemplated under the Punjab Finger Print Manual.

9. The learned counsel for the petitioner drew our attention to a decision of a Division Bench of this Court in the case of **Government of NCT of Delhi v. Har Dutt Singh** dated 28.04.2009 in W.P.(C) 5229/2007. On going through the said decision, we find that it was a case where a Head Constable was found to be discharging the functions and duties of an ASI in the Computer Section. In that very decision, the Division Bench quoted the Tribunal’s order with approval wherein there was mention of the Supreme Court Judgment in the case of **“Selva Raj v. Lt. Governor of Island, Port Blair and Others,”** 1998 (3) SLR 770. In that decision, the Supreme Court had held that if a person officiates in a higher post, he cannot claim the pay-scale of the higher post as that would amount to promotion, which would depend upon conditions of service. However, it was further held that the periods for which the person concerned had discharged his duties, he would be entitled to the salary of the higher post. Unfortunately for the petitioner, this principle does not apply to the facts of the present case. The petitioner was appointed to the post of ASI (Finger Print) and he continued to work as such. He never officiated in the higher post of SI (Finger Print). Consequently, there is no question of his claiming the salary of the higher post when, in fact, he had not functioned in the higher post at all.

10. The only point raised by the learned counsel for the petitioner was that because the petitioner had been made to function as an Expert, therefore, he ought to be regarded as having functioned as a Sub-Inspector in the Finger Print Bureau. According to the learned counsel for the petitioner, the definition of Expert in the

Punjab Finger Print Manual stipulated that an officer would be regarded as an Expert only if he was an officer not lower than the rank of Sub-Inspector in the Finger Print Bureau. Since, according to the learned counsel, the petitioner had allegedly functioned as an 'Expert', therefore, he must be regarded as having discharged the duties of a Sub-Inspector (Finger Print). We feel that this argument is very convoluted. First of all, as we have already pointed out above, the petitioner cannot, even in the terms of the definition contained in the Punjab Finger Print Manual, be regarded as an Expert as he is not an officer of the rank of Sub-Inspector or above. Secondly, in the Finger Print Bureau itself, there are posts of ASIs as well as S.I.s and he has not been made to officiate in any post of a Sub-Inspector. Thirdly, in any event, the petitioner had claimed a higher pay-scale, which, according to the Supreme Court decision, cannot be given to him even if he had been regarded as having officiated in the higher post of Sub-Inspector (Finger Print). We may also point out that we are in agreement with the logic adopted by the Commissioner of Police that investigations are carried out by the ASIs as well as SIs and sometimes by Inspectors also but that does not mean that when an ASI conducts an investigation, he would be entitled to the higher pay-scale of an SI or Inspector.

11. Consequently, we do not find any infirmity in the impugned order passed by the Tribunal whereby the petitioner's Original Application was rejected. This writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V.K.JAIN, J

MARCH 12,2012/'sn'