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

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W.P.(C) 6393/2002

23rd May, 2013

MOHD. INAM

..... Petitioner

Through: Mr. Shiv Prakash Pandey and Mr.
Raghav Pandey, Advs.

VERSUS

SR. DIVISIONAL MANAGER AND ORS.

.... Respondents

Through: Mr. Kamal Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Irrespective of the prayer Clauses of the writ petition, on behalf of the petitioner the only relief pressed before me at the time of hearing is that petitioner on his re-appointment with the respondent No. 1 on 27.01.1993 should get the basic pay of Rs. 1410 and not the scale of Rs. 930-1410-2010 as granted by the appointment letter.

2. On behalf of the petitioner to claim the benefit of the basic pay of Rs. 1410 reliance is placed upon the office order of the respondent No.

1 dated 16.03.1990 and the relevant portion of which reads as under:

“The fixation of pay on absorption in the Class III post will be in the following manner:

- (i) The basic pay will be initially fixed at the lowest stage in the scale of pay of Assistant or Record Clerk as the case may be and thereafter one increment for every two years completed service as a Development Officer may be granted (a part or a fraction of such period shall not be counted for the purposes). However, the basic pay to be fixed shall be not more than the basic pay he was drawing as a Development Officer at the time of termination. Further, if the basic pay he was drawing as a Development Officer at the time of termination was not in the scale of pay of the Class III post to which he is being reappointed, the basic pay in Class III post shall be fixed at a stage which is just below the basic pay he was drawing as a Development Officer at the time of his termination.”

3. When we see the relevant portion of the circular of respondent No. 1 dated 16.03.1990 it becomes clear that if the person who earlier stood retired is re-appointed on Class III post then such a person will not get basic pay more than what he was drawing as a Development Officer at the time of termination. In case the re-employed employee was not in the scale of Class III post when he earlier retired, and now to which grade he is re-appointed, the basic pay which is at just below the basic pay

which he was drawing as Development Officer at the time of his earlier termination will be paid at the time of his fresh employment in Class-III.

4. It was therefore necessary for the petitioner to plead that what was his pay when he first ordinarily retired from the respondent No. 1 on 08.11.1983. Petitioner also had to state whether he was in a Class III post or not. A reading of the writ petition shows that no details are given as to what was the pay of the petitioner when he firstly was compulsorily retired on 08.11.1983. Only that pay is given in terms of the circular dated 16.03.1990, which the petitioner drew when he was first compulsorily retired. In case the petitioner was lower than the Class-III employee then petitioner had to be put one stage below the Class-III employee at the time of his re-employment. No facts are however found in the writ petition on all these aspects. Therefore, simply making of representation cannot help the petitioner because petitioner cannot get the alleged benefit as claimed unless facts are pleaded to show as to how he satisfied the factual requirements as contained in the circular dated 16.03.1990.

5. In view of above, the petitioner has failed to make out a case as to how he is entitled to benefit of the circular dated 16.03.1990.

Petitioner was appointed in his second employment with respondent No. 1 as Record Clerk (Class-III) in specific pay scale Rs. 930-1410-2010 and therefore petitioner cannot get any other pay unless petitioner had pleaded and established facts to satisfy the requirements of the aforesaid relevant para of the circular dated 16.03.1990.

6. I may note that the respondent No. 1 in its counter-affidavit has stated that petitioner when he was re-employed in January, 1993 got a scale of pay which was in fact higher than what he used to receive when he stood compulsorily retired on 08.11.1983.

7. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving parties to bear their own costs.

VALMIKI J. MEHTA, J

May 23, 2013

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