

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.6111 of 2012(O&M)
Date of Decision: **August 27, 2015**

Mahender Kumar Singh ...Petitioner

Versus

Union of India and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Mahender Kumar Singh, petitioner-in-person.

Mrs. K.K. Kahlon, Sr. Panel counsel
for Union of India.

Mr. R.K. Malik, Sr. Advocate with
Mr. Rimple Soi, Advocate for respondents No.2 to 4.

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HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the action of the respondents, whereby, the pay scale of the petitioner on the post of Information Scientist has been fixed in the scale of Rs.15600-39100 with grade pay of Rs.5400/-, which is lower than the revised pay scale of the post of Rs.15600-39100 with Grade Pay of Rs.6600/- (corresponding to the pre-revised pay scale of Rs.10000-15000 of the post as advertised)

The petitioner is an employee of the National Brain Research Centre,(hereinafter referred to as `NBRC'), which is an autonomous Institute under the Department of Biotechnology, Government of India. He has been working in the said institute since 21st March, 2005. Presently, he is holding the post of Information

Scientist.

In March, 2008, the respondent Institute advertised the post of Information Scientist. The petitioner applied through proper channel as he was already working on the post of Junior Information Scientist in the Institute. He was called for interview held on 24.11.2009. On 23.04.2010, he received his letter of appointment (Annexure P-3) for the post of Information Scientist in the revised pay scale of Rs.15600-39100 with Grade Pay of Rs.5400/-.

The grievance of the petitioner is that though the advertisement (Annexure P-1) specified the pay scale of the post of Information Scientist to be Rs.10000-15200, revised pay scale of which is Rs.15600-39100 with Grade Pay of Rs.6600/-, but he has been appointed on the lower scale of Rs.15600-39100 with Grade Pay of Rs.5400/-.

He obtained copy of the minutes of the Selection Committee. The minutes reveal that the Selection Committee comprising of a Chairperson and four members met on 24.11.2009 to select a suitable candidate for the post of Information Scientist in the revised pay scale of Rs.15600-39100 with Grade Pay of Rs.6600/-. Ten candidates were called for the interview, but only eight attended. After going through the bio-data and the performance of the candidates in the interview, the Committee recommended the selection of the petitioner in the following terms:

“Mr. Mahender Kumar Singh may be appointed as Information Scientist (Post Code-06) in NBRC by downgrading the above scale of pay to Rs. 15600-39100

with Grade Pay of Rs. 5400/- (the revised scale) plus other allowances as per rules of NBRC”

The petitioner represented against the act of the respondents in appointing him on the lower scale by downgrading the scale. Having received no favourable response, he filed the instant petition impugning the same. He has also alleged bias against two persons, one of whom, namely Mr.Kannan Kasturi, was the Member Secretary of the Selection Committee.

In the written statement filed on behalf of the respondents, it has been stated that the petitioner has misled the Court and has concealed material facts and has wrongly projected that his pay has been down graded. Explaining the stand of the respondents, it has been stated that the National Brain Research Centre advertised the post of Information Scientist vide Annexure P-1 in which the pre-revised pay scale has been mentioned as 10000-15200. This pay scale was further revised to 15600-39100 with a grade pay of Rs.6600/- for the post of Information Scientist. It was specifically mentioned at Serial No.5 of the General Conditions that the candidates may be considered for higher/lower grade depending on their profile. It has been explained that in terms of the above condition, variation could be made only in the grade pay on the basis of profile of the candidate and not in the pay scale. Thereafter, the selection process started and a screening committee consisting of 5 members was constituted in which 10 candidates were short-listed, of which the petitioner was one. A Selection Committee was constituted

consisting of one Chairperson and three members including two outside expert members. The Committee also included officiating Chief Administrative Officer as Member Secretary. The Selection Committee conducted the selection process in a most fair and transparent manner in its meeting dated 24.11.2009. Out of 10 short-listed candidates, only 8 attended the interview and the petitioner was selected to the post of Information Scientist in the pay scale of 15600-39100 with a Grade pay of Rs.5400/- on the basis of his profile in consonance with condition No.5 of the advertisement.

It was specifically indicated in the offer of appointment that the petitioner has been selected for the post in the pay scale of 15600-39100 with a grade pay of Rs.5400/- and that the appointment is on contract basis initially for five years. It was also stated in the letter that in case the petitioner wishes to accept the offer of appointment, then he will have to execute the contract agreement at the earliest. The petitioner accepted the offer of appointment and executed the contract agreement on 26.4.2010 (**Annexure R-2/1**), wherein, he accepted all the terms and conditions including the Grade pay and he was issued the letter of appointment dated 20.07.2010 (**Annexure R-2/2**) by specifying the pay scale and the grade pay as per the terms and conditions of the agreement. Hence, the contention of the petitioner that his pay has been downgraded is wrong. There had been no downgrading of the pay at any stage as he was appointed in the Grade pay of 5400/- at the time of initial appointment itself. It is contended that after accepting the offer of appointment

and after executing the contract agreement, the petitioner cannot be permitted to approbate and reprobate on the basis of doctrine of Election.

During the pendency of the petition, the petitioner has placed on record various documents. Annexure P-9 is the O.M. of the Ministry of Finance, Government of India as per which the pay revision recommendations of the Central Civil Service (Revised Pay) Rules, 2008 were extended to autonomous institutions.

Annexure P-11 is the reply of the NBRC to various questions of the petitioner, which are relevant for the present petition namely, the authority competent to create core posts in the autonomous institutions like NBRC, the authority competent to downgrade the posts therein, whether the sanction of the competent authority has been taken for downgrading any post in NBRC. The questions and the information furnished (Annexure P-11) is reproduced herein:

“NBRC/Admn/RTI-2005/5374

26th March, 2014

To

Mr. Mahender Kumar Singh
B-61, Nanhey Part, Uttam Nagar,
New Delhi-110059

Subject: Information under RTI Act, 2005-reg.

Dear Mr. Singh,

Please refer to your online RTI application dated 19.02.2014 addressed to the Chief Public Information Officer, Department of Biotechnology, Ministry of Science & Technology, Govt. of India, New Delhi-110003, which was forwarded by Director/CPIO, DBT, New Delhi to NBRC (received on 05.03.2014) to furnish the information directly to the appellant. The required information sought for is given hereunder:-

Query	Reply
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1) Please provide the authority competent for creation of core posts in the autonomous institution of Department of Biotechnology (DBT) especially in respect of National Brain Research Centre.	A request from NBRC (An Autonomous Body of Department of Biotechnology) for creation of posts goes to Department of Biotechnology, Government of India and the DBT conveys the creation of posts to NBRC through a formal communication.
2) Please provide the authority competent for up gradation or down gradation of any existing sanctioned core post in the Autonomous Institutions of Department of Biotechnology especially in respect to National Brain Research Centre.	Authority to create posts is competent for permanent up-gradation/down gradation of posts.
3) Whether concurrence or approval of Integrated Finance Division of Department of Biotechnology is required at any stage with respect to autonomous institutions of Department of Biotechnology for a) creation of core posts, b) downgrading of existing core posts).	As regards creation of posts as well as permanent up-gradation/down gradation of posts at NBRC, the matter is taken care by Department of Biotechnology.
4) Whether any concurrence for downgrading of any sanctioned core post of National Brain Research Centre has ever been given by Integrated Finance Division of DBT or DBT itself. If yes copy of the same.	No permanent down-gradation of post has been done in NBRC.
5) Whether the Office Memorandum of Ministry of Finance (OM NO.7/23/2008-E-III (A) dated 30.08.2008, which extends the accepted pay scales of 6 th Central Pay Commission to Autonomous Institutions etc. (copy enclosed for ready reference) also applies to Autonomous Institutions of Department of Biotechnology as well including National Brain Research Centre.	The pay revisions vide OM No.7/23/2008-E-III (a) dated 30 th September, 2008 of Department of Finance was adopted by NBRC after approval of Competent Authority.
6) Name of the authority competent to receive and decide complaints against Directors of the Autonomous Institutions of Department of Biotechnology.	As per Rules of NBRC, Director is subject to the supervision, direction and control of the Governing Council of NBRC, which is one of the authorities of the Centre (NBRC) and the principal executive body of the Centre.
7) Copy of action taken (if any) for complaints and appeals filed by the undersigned to Secretary, DBT dated 14.11.2012 and 11.01.2014 and sent by speed post.	The relevant information is available with DBT.

Thanking you,

Sd/-
(Chief Public Information Officer)"

The petitioner has further placed on record Annexures P-19 and P-20 in which the following relevant information has been furnished by the respondents under RTI:

"(i) The authority competent for creation of core posts in the Autonomous Institution of Department of Biotechnology (DBT) lies with Ministry of Finance based on the proposal from DBT." (Annexure P-19)

"Reply of point 6 & Point 7

"NBRC follows the recruitment and promotion rules of NII, New Delhi. You may inspect the relevant documents on a mutually convenient date subject to payment of requisite fee."(Annexure P-20)"

These replies of the respondents indicate that authority to create the core posts in the NBRC is with the Ministry of Finance based on the recommendations of the Department of Biotechnology, Government of India. The power of up gradation or down grading of the existing sanctioned core posts vests with the Department of Biotechnology, Government of India. It was also clarified that no permanent downgrading of any post had been done at NBRC. And, most significantly, that NBRC follows the recruitment and promotion rules of National Institute of Immunology, New Delhi (hereinafter referred to as 'NII').

Vide order dated February, 2014, the respondent was directed to file affidavit indicating the number of posts of Information Scientists sanctioned in the institute, the competent authority for sanctioning the posts, the pay scales attached to the posts. The respondents were also asked to indicate as to whether any other

employee had been accorded similar treatment of being appointed on a lower grade pay like in the case of the petitioner.

In response to this direction an affidavit dated 18.4.2014 of the Director, NBRC was filed. The point wise information was given as under:

Point-wise replies to the queries raised by the petitioner.	Replies
1) Indicate the number of posts of Information Scientists sanctioned for its Institute (National Brain Research Centre)	Total 3 nos of Information Scientist posts were sanctioned by Ministry of Finance, Department of Expenditure as communicated by Department of Biotechnology, New Delhi . (copy attached herewith as Annexure 2/3 and R-2/4).
2) The competent authority for sanctioning for such posts and the pay scale attached to the post.	Ministry of Finance, Department of Expenditure as communicated by the Department of Biotechnology. Information Scientist – Rs.10,000-325-15,200 (pre-revised)
3.a) Whether any other candidate/employee for any post has been accorded such treatment	3.a) Yes. Previously also there were 4 (four) instances wherein candidates were considered for lower pay scale/grade pay keeping the same designation as advertised. The details are attached herewith as Annexure R-2/5.
3.b) The stand of the institute regarding the pay revision in the light of the instructions dated 30 th September, 2008 issued by Govt. of India, Ministry of Finance.	3.b) The pay revision of the employees of NBRC (Autonomous Society under DBT, New Delhi) as the DOE, Min. of Finance Order No. 7/23/2008-E-III (A) dtd. 30 th September, 2008 was adopted and implemented with the approval of the Chairman, Governing Council of NBRC.

The grant of the lower grade of pay to the petitioner was further justified and explained by stating that on the basis of Sixth Pay Commission Report, the Government of India, Ministry of Finance framed Central Civil Services (Revised Pay) Rules, 2008 which came into force w.e.f. 1.1.2006. Thereafter, the Government issued a

notification dated 30.9.2008, whereby it was decided to extend these Rules to the employees of Autonomous organizations etc. It was further clarified that the revised pay structure as incorporated in Section I and II of Part A of the First Schedule to the Rules alone may be adopted. Thereafter, the National Brain Research Central adopted the same.

It was explained that a bare perusal of Sections I and II of Part A shows that whereas Section I pertains to the fixation of new pay bands along with grade pay for the existing employees as on 1.1.2006 and Section II pertains to fixation of pay corresponding to the new pay band and grade pay for those who are direct recruits appointed on or after 1.1.2006. Rule 8 provides that Section II of Part A of the First Schedule indicates the entry level of pay band at which the pay of direct recruits to a particular post carrying a specific grade pay will be fixed on or after 1.1.2006. In the present case, the petitioner was appointed as a direct recruit on contractual basis in the year 2010, and was appointed as direct recruit with Grade Pay of Rs. 5400 and was given corresponding Pay band of Rs.15600-39100 in accordance with Section II of Part-A. His Grade Pay was fixed in accordance with the recommendation of the Selection committee on the basis of bio-data and performance of the petitioner in interview which was accepted by the competent authority (which was competent to do so under clause No. 5 of the Advertisement No.2/2008 and under the General Financial Rules, 2005) and as per the terms and conditions of the agreement dated 26.4.20010 of the petitioner with

NBRC, accepted and signed by him, which was an integral part of the contract. It was stated that the Director, NBRC is appointing authority for all the posts carrying a scale minimum of which is Rs.15,600/- per month and above but below Rs.37,400/- per month in PB-3, PB-4 with Grade Pay of Rs.5400/-, Rs.6600/-, Rs.7600/-, Rs.8700/, Rs.8900/- and Rs.10,000/- (in accordance with National Institute of Immunology Bye Laws Appendix-II, Sl. No. 2, which are being followed by the NBRC) and is empowered to offer lower grade pay based on the recommendation of the Selection Committee as per Rule 254 of the General Financial Rules, 2005, which is reproduced as follows:

“Rule 254: “Adjustment of appointments: A Ministry or Department competent to make appointments to posts in any cadre may make appointments in a lower post in the cadre to the extent of vacancies left unfilled in higher posts.”

Thus, in this affidavit, additional reliance was placed on the aforementioned Rule 254 of the General Financial Rules.

As it has been stated that in NBRC the recruitment rules of NII are being followed, a reference to the same is necessitated.

The Recruitment Rules for different posts of NII, an autonomous body of the Department of Biotechnology, Ministry of Science and Technology have been annexed as Annexure P-21. These rules have come into force after they were duly approved by the Department of Biotechnology, Ministry of Science and Technology. The relevant Rule 7 which deals with direct recruitment and is as under:

“7. Direct Recruitment.

7.1 The candidates possessing the educational qualifications and experience as specified in Schedules are eligible for direct recruitment and shall be selected by the Expert Selection Committee as specified in Schedule IV.

7.2 The selected candidates from the date of assuming the duties will be on contract initially for a maximum period of five years. At the end of four years of service the candidates performance will be assessed by an Assessment Committee to be appointed by the Appointing Authority to decide if the candidate's performance during the four years service has been satisfactory or otherwise. If his/her performance is found to be satisfactory by the Assessment Committee, he/she will be offered regular appointment on completion of five years contract service. In cases, his/her performance is not found to be satisfactory, his/her contract service will stand terminated at the end of five years term of the initial contract appointment.

7.3 In case a departmental candidate is selected for appointment for the post through this method, the same shall be deemed to have been filled by Direct Recruitment.

7.4 Direct recruits may be given, in deserving cases, to be so recorded by the Expert Selection Committee, higher initial start than the minimum of the scale to which they are appointed. However, such an initial start shall not exceed five advance increments over the minimum of the scale. Recommendations, if any, by the Expert Selection Committee for grant of more than five advance increments will be examined by the Governing Body of the N.I.I., which is the competent body to decide the same.”

The respondents have also placed on record the Memorandum and Rules and Regulations of the Respondent Society.

The NBRC is a Society registered under the Societies Registration, Act, 1860. It has framed the Rules called “The Rules of the National Brain Research Centre”.

As per Rule 5 there are various authorities of the NBRC like The Governing Council, Academic Council etc.

Rule 7 contains the relevant provisions regarding the Governing Council. The Governing Council is entitled to exercise all such powers and to do all such acts, deeds and things as the Centre is authorised to exercise or do. Among the powers and functions of

the Governing Council is to prescribe the procedure for recruitment of officers and establishment in the service of the Centre, the terms and tenures of appointments, emoluments, allowances, rules of discipline and other conditions of service in the establishment of the Centre.(Rule 7.1.3.6)

“7.1.3.6. Frame amend or repeal Bye-Laws, for the administration and management of the affairs of the Centre and in particular to provide for the following matters:

- (a) preparation and sanction of budget estimates, sanctioning of expenditure, entering into and execution of contracts, investment of the funds of the Centre, sale or alteration of such investments and maintenance and operation of accounts and their audit;*
- (b) procedure for recruitment of officers and establishment in the services of the Centre;*
- (c) terms and tenures of appointments, emoluments, allowances, rules of discipline and other conditions of service in the establishments of of the Centre;*
- (d) such other matters as may be necessary for the administration of the affairs and funds of the Centre.”*

The Finance Committee has power and function among others to consider proposals for creation of new posts and make recommendations to the Governing Council in keeping with the guidelines issued by the Government of India from time to time; to consider revision in pay scales, allowances and other terms and conditions of service of staff having financial implications and make recommendations to the Governing Council; to review financial position of the Centre and make recommendations from time to time to the Governing Council and DBT. (Rule 13.3.3 and 13.3.4)

“13.3.3. To consider proposals for creation of new posts and make recommendations to the Governing Council in keeping with the guidelines issued by the Govt. of India from time to time.

13.3.4. To consider revisions of pay scales, allowances and other terms and conditions of service of staff having financial implications and make recommendations to the Governing Council.”

Rule 15 deals with the Selection Committee and is as under:

“There shall be Selection Committee for recommending appointment to the faculty posts in the Centre and such other posts as may be prescribed by the Bye-Laws. The Selection Committees shall be established and constituted by the Director.”

Admittedly, the post of Information Scientist carries a revised pay scale of Rs.15600-39100 with Grade Pay of Rs.6600/- and was advertised as such. But the petitioner has been appointed in the pay scale of Rs.15600-39100 with lower Grade Pay of Rs.5400/- on the recommendation of the Selection Committee. As per Annexure R-2/10, the recommendation of the Selection Committee was approved by the Coordination Committee in its meeting held on 1.4.2010 and thereafter appointment letter was issued with the approval of the Director on the grade pay as recommended by the Selection Committee.

The question is, could this have been done? Where from did the respondents derive the power and authority to appoint the petitioner on a lower grade pay than what the post carries?

It is clear from the reply of the respondents received by the petitioner under the RTI, that the power of upgradation or downgrading of the existing sanctioned core posts vests with the Department of Biotechnology, Government of India. It is also clarified

in the said reply that no permanent downgrading of any post had been done at NBRC. It is also stated that NBRC follows the recruitment and promotion rules of National Institute of Immunology, New Delhi.

As per Rule 7.4 of the Recruitment Rules of NII, which are being followed by the NBRC, in deserving cases to be so recorded by the Selection Committee, direct recruits may be given higher start than the minimum of the scale to which they are appointed. However such an initial start shall not exceed five advance increments over the minimum of the scale. There is no provision in the NII recruitment rules for appointing on a lower pay scale or grade pay. Hence, the appointment of the petitioner on a lower grade pay cannot be sustained on a reference to the NII Rules.

I have not been able to locate any power in any of the provisions of 'The Rules of the National Brain Research Centre', nor has any such provision been pointed out, whereby a person appointed on a post can be appointed on a lower pay scale or grade pay than that prescribed for the post. The only reliance of the respondents is on the advertisement where it is mentioned in condition No. 5 in the General Instructions that candidates may be considered for higher/lower grade depending on their profile.

Rule 254 of the General Financial Rules, 2005, to which a reference has been made in the affidavit dated 18.4.2014 of the Director of the respondent institute does not cover the present case as it only deals with the power of the Ministry or Department competent to make appointments to posts in any cadre, to make appointments in a lower post in the cadre to the extent of vacancies left unfilled in higher posts. That is not the case here.

In matters of public appointment, a person is appointed only if he is qualified and suitable for the post. Each post carries a pay scale which is specified in the Rules or instructions. Barring some provisions in the relevant Rules or instructions to give a higher start or advance increments for higher qualifications or other valid reason, the appointees to the post have to be given the pay scale of that post. It cannot be left to the appointing authority to appoint a person on a lower pay scale or grade pay than that prescribed for the post. This would be violative of Article 14 and the principle of 'equal pay for equal work'. Additionally, it would confer arbitrary power on the appointing authority and be prone to misuse.

Merely because in the advertisement it was indicated in condition No.5 in the General Instructions that candidates may be considered for higher/ lower grade depending on their profile, would not justify the appointment of the petitioner on a lower grade.

Further, the fact that on earlier occasions lower pay scale or grade pay than that advertised was offered to candidates, which remained unchallenged, does not furnish an adequate justification for an action which is neither sanctioned by the Rules nor is sustainable on principle. The fact that the petitioner has accepted the offer of appointment on the lower grade pay and signed an agreement in that regard can also be no ground to deny the petitioner the legitimate claim to the pay scale of the post on which he has been appointed as there can be no estoppel against law.

Accordingly, this writ petition is allowed. The appointment

order to the extent of appointing the petitioner on the pay scale of Rs.15600-39100 with a Grade pay of Rs.5400/- is quashed. It is directed that the petitioner be treated to have been appointed on the pay scale of Rs.15600-39100 with a Grade pay of Rs.6600/-. The consequential arrears be paid to him within a period of three months with interest @ 8% per annum.

(HARINDER SINGH SIDHU)
JUDGE

August 27, 2015
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