

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 22.08.2016

CWP No.13248 of 1998

Satish Chander Mohan

...Petitioner

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjeev Pandit, Advocate, for the petitioner.

Ms. Shruti Jain Goel, AAG, Haryana.

RAJIV NARAIN RAINA, J.

No amount of cosmetology in the writ petition or the manifest errors committed by the functionaries of the State Government in the Department of Animal Husbandry, Haryana in wrongly mentioning higher pay scales can replace the pay scale prescribed for the post of Deputy Director (Statistics) included in Appendix A to the Haryana Veterinary (Group A) Service Rules, 1995 (for short 'the Rules'). Nor can mistakes bring relief to the petitioner to claim a higher pay scale on promotion as Deputy Director (Statistics).

Rule 3 of the Rules deals with 'Recruitment to Service' and defines 'Service to comprise the posts shown in Appendix A to the Rules'. Appendix A in its Non-Veterinary Cadre prescribes the pay scale of ₹2200-75-2800-EB-100-4000 for the post of Deputy Director including the moot post of Deputy Director, Statistics Headquarter. The pay scale has been revised to ₹8000-275-10200-EB-175-13500 w.e.f. 01.01.1996 by decadal pay revision rules on recommendations received from Pay Commissions set

up for the purpose. The petitioner was promoted as Deputy Director (Statistics) on 17.03.1998 during the currency of the Rules. He does not challenge the date of promotion, but complains that his pay scale has been downgraded from ₹3000-4500 to ₹2200-4000 on promotion. The petitioner stakes claim to the pay scale of ₹3000-4500 for the reason that the Director, Animal Husbandry, Haryana had sent a proposal to sanction scale of ₹3000-4500 in the Centrally Sponsored Scheme administered by the Department and Government had sanctioned the project and post of Officer In-charge (Statistics)-Deputy Director (Statistics) for the year 1996-97 in the scale of ₹3000-4500.

In the written statement put in by the Department, while contesting the case it is maintained that the petitioner was working as Statistical Officer in the Directorate of Animal Husbandry, Haryana, Chandigarh and was promoted as Deputy Director (Statistics) on acceptance of his earlier writ petition bearing CWP No.654 of 1997 in which directions were issued to the Department by the Division Bench while allowing the writ petition to consider the case of the petitioner for promotion to the rank of Deputy Director (Statistics) finding him “fully qualified and eligible” for the post. Relief came to the petitioner on filing COCP No.328 of 1998 complaining of non-implementation of the orders of the Division Bench dated 22.12.1997. The contempt Bench directed the respondents to comply with the orders within four weeks from the date when the order was passed in the contempt petition. It is submitted that the post of Deputy Director (Statistics) has been sanctioned in the revised scale of ₹8000-13500 during the year 1998-99, which was earlier ₹2200-4000 before the revision of the pay scale. The post of Deputy Director (Statistics) is included in the service rules in the prescribed pay scale of ₹2200-4000 and, therefore, no mischief

was committed in government in downgrading the pay scale of the post while promoting the petitioner as Deputy Director (Statistics) on 20.03.1998 on pain of contempt. The service rules were notified on 21.02.1995 and there is no ambiguity with respect to the pay scale for the post in question. There was no foul play as alleged by the petitioner to doom and mar his career prospects or his status. The State asserts in its reply that no parallel post of Officer In-charge (Statistics) has been created by the Director, Animal Husbandry as it is not within the officer's competency or purview to create such a post on the basis of which the claim for higher pay scale rests. The pay scale granted on promotion was as prescribed in Appendix A to the Rules. It has also been asserted that the petitioner never performed the duties of Deputy Director (Statistics) before 20.03.1998, when he was promoted in pursuance to the orders of this Court. He cannot claim the benefit of the post from 01.04.1996 as asserted by him. Besides, he was not the senior-most officer in the cadre for promotion to the higher post.

Be that as it may, the petitioner was promoted in compliance of the Court orders which have attained finality. The State admits that there was some clerical mistake in mentioning the pay scale of the post of Deputy Director (Statistics) in the Centrally Sponsored Scheme in the year previous to the year in which the petitioner was promoted. However, the officer has been promoted in the right pay scale prescribed for the post in Appendix A. The State explains that the post of Joint Director (Statistics) was downgraded to the post of Deputy Director (Statistics) in the scale of ₹2200-4000 vide memo No.2439-AH-4-96/6213 dated 16.05.1996 (Annex R-III). The petitioner was promoted thereafter and, thus, there is no ambiguity in the promotion order or the pay scale he was placed in. There has been honest obedience in implementation of the orders passed in the petitioner's earlier

writ petition. If there are errors committed easily discernible, they will not run counter to the prescription in the Rules governing service prescribing post and pay scale. It is always open to the State to correct an apparent clerical mistake at any time. The result could only be achieved by amendment of the Rules, which had not taken place and, therefore, sanctions accorded for the years 1996-97, 1997-98 & 1998-99 are of no moment and the mistake cannot be repeated at the cost of the exchequer.

An affidavit has been filed by Dr. K.S.Dangi, Director, Animal Husbandry, Haryana, Chandigarh dated 08.07.2001 in the present proceedings. In Para.2, it deposed as follows:

“2. That pay scale of ₹3000-4500 of the post of Deputy Director (Statistics) shown in the gradation list pertaining to year 1997 of Class-I officers of Animal Husbandry of non-vety. cadre is wrong because of typographical error. Correct pay scale of the post of Deputy Director (Statistics) is ₹2200-4000 (ex-cadre) as prescribed in Haryana Veterinary Service (Group-A) Rules, 1995.”

It is stated in Para.3 of the affidavit that the petitioner cannot take any undue benefit on the basis of statements made in the gradation list pertaining to year 1997 on which also the petitioner relies to claim relief of higher pay scale. Albeit, there was a disclaimer in the gradation list, which reads as follows:

“This gradation list is published departmentally for convenience of reference and it should be understood that no claim can be based upon the authority of the statements made in this publication.”

Moreover, the respondents had also rectified the said gradation list and sent a new draft of gradation list for necessary correction to the

Controller, Printing & Stationery, Haryana vide letter No.3480 dated 29.06.2001. In Para.4, it has been deposed as follows:

“4. That similarly pay scale of the post of Deputy Director (Statistics) of ₹3000-4500 wrongly shown in administrative approval pertaining to year 1996-97 (Annexure P-III) because of clerical mistake. The same mistake was corrected in the next financial administrative approval in the year 1998-99. Regarding that clear position has already been explained in Para.10 of the written statement filed by the respondent.”

I have heard learned counsel for the parties and have perused the record and rather voluminous pleadings including affidavits, counter affidavits, rejoinder and additional affidavits filed by the parties, with their assistance.

I tend to agree with the contention of the learned Law Officer appearing for the State of Haryana that pay scale can be governed only by Rule or by amendment in the Rules and if the prayer of the petitioner were allowed, it would amount to unjust enrichment and award of undue benefit to the petitioner not contemplated in rules. It is for this reason perhaps that pay protection was not claimed by virtue of reduction in salary, if that was the case. The Court cannot pass an order anyhow to perpetuate conspicuous errors and flaws on the record regarding pay scale of the post of Deputy Director (Statistics), which mistakes are always open to rectification to be brought in tune with the pay scale prescribed in Appendix A to the Rules. Any benefit taken by the petitioner while in the Integrated Sample Survey Scheme, an ex cadre deployment, will not inhere in the petitioner permanently to give him as a matter of right a claim to a pay scale higher than ₹2200-4000 which is not prescribed for the promotional post. This Court in CWP No.654 of 1997 held the petitioner qualified and eligible to

hold the promotional post and therefore issued directions, but made no definitive orders or return findings as to admissible pay scales to which the subsequent court would feel bound. There is no declaration in the orders passed by the Division Bench regarding pay scale since the determination was respecting right to consideration for promotion. This court is bound by ratio alone on the point in issue and adjudged.

Thus, the question of pay scale remained at large to be decided in the present petition, which I would say on hearing the matter at length is found devoid of merit. The petition has more mass than merit. Consequently, it is ordered to stand dismissed but without any order as to costs.

22.08.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes