

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.2656 of 1997

Date of Decision: 26.7.2016

Sanjay Kumar Dhawan

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.K.L.Dhingra, Advocate for the petitioner

Ms.Shruti Jain Goel, AAG, Haryana

None for respondents-DRDA

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RAJIV NARAIN RAINA, J. (Oral)

1. No one appears for the contesting respondent-DRDA. It is ordered to be proceeded against ex-parte.
2. Heard learned counsel for the petitioner. State has no role to play in this case and is a proforma party.
3. The petitioner was appointed as a Data Entry Operator on *ad hoc* basis in 1988. He continued to serve till he was disengaged in 2001 during the pendency of the petition. He has not challenged his disengagement in a court of law and has become final. He was placed in the running pay scale when appointed. He was granted his annual increments regularly since his appointment, though he was on ad hoc basis. There was no condition of type test stipulated in the letter of appointment (Annex. P-1) that his increments would be based on the strength of qualifying a test in English typing. However, the condition of passing a type test was imposed on him and his annual increment was stopped w.e.f. 1st July, 1992. It was only in

February, 1994 that recommendation was made by the office of the DRDA, Yamunanagar as duly approved by the Additional Deputy Commissioner-cum-Chief Executive Officer, DRDA, Yamunanagar certifying that the petitioner had knowledge of English typing and accordingly, he should be granted annual grade increments, the impediment having been removed from his way. It is another matter that the impediment could not have been imposed de hors the terms of employment. It is the petitioner's assertion that a test could not have been imposed on him in view of the instructions dated 28th April, 1987 (Annex.P-10) wherein the Haryana Government examined the matter and the Chief Secretary, Haryana issued the guidelines to inform all concerned that if there is no condition of type test in the appointment order of clerks, the annual increment/selection grade can be granted to them, without passing any type test.

4. The question for determination is when these instructions deal with the post of Clerks, would the instructions apply to the petitioner as he was not appointed as a Clerk but as a Data Entry Operator, and therefore, only the substance of the instructions by analogy can be applied as the guiding principle in the case in hand but not strictly speaking. This is because annual grade increments/pay are based on service rendered annually and in case the appointment is made in a running pay scale, then I should like to think that even without the help of the instructions (Annex.P-10), the petitioner would be entitled to increments as a Data Entry Operator as were earlier granted to him but were suddenly stopped on the ground of type test. However, no final decision has been taken on the recommendations supra. This petition was filed in 1997 and final decision has not been taken on the subject matter by the competent authority in the DRDA even after long passage of time, then it would be safe for this Court to conclude that the

approval of the Additional District Commissioner-cum-Chief Executive Officer, DRDA should be treated as final and accordingly bring the fruits of litigation to the petitioner by way of award of annual increments for the period 1.7.1992 onwards as that would be to my mind the just and equitable thing to do. However, the monetary value of the arrears of annual increments, while granting them by the present order, would remain restricted to three years prior to the filing of the writ petition i.e. 24th February, 1997.

5. The arrears of difference of salary from three years prior to 1997 and calculated till the date of disengagement by giving benefit of annual increments become a right to money payable to the petitioner within three months from the date of receipt of a certified copy of this order. Actual arrears from 1992 to three years prior to the filing of the writ petition are refused since the claim is in the nature of recovery of money and if a suit were brought to make recovery for that period it would be barred by time. Nevertheless, for the period denied the right would remain notional.

6. In view of the above, this petition is allowed to the extent indicated and in the manner provided.

26.7.2016
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

✓
Yes/No

Whether Reportable

✓
Yes/No