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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 06.01.2016

+ W.P.(C) No. 8660/2005

NAGENDRA KUMAR JHA Petitioner

Through: Mr Sandeep P. Agarwal and Mr
Rajesh Pathak, Adv.

versus

UOI AND ANR. Respondent

Through: Ms Raman Oberoi, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner seeks a direction that the pay drawn by him in the post of Lecturer in Sanskrit Department of Samastipur College, University of Darbhanga be protected. He was appointed after successfully competing to the post of CISF on 10.09.2000 in the pay scale of Rs. 8000-275-13500. The petitioner had joined the Samstipur College, a Constituent Body of Lalit Narayan Mithila University, Darbhanga on 11.12.1996 as a Lecturer. He was subsequently confirmed to the post on 03.05.1999. He appeared in the Civil Services Examination and was selected for the post of Assistant Commandant in the CISF and offered appointment. The petitioner refers to a conversation of Administrative Institute Deputy Director to the effect that pay protection order shall be made. After completion of training, he was posted to the ONGC, Nazira Unit of the CISF with effect from 01.04.2002. He was later transferred to the CISF Diamond

Mining Project, Panna, Madhya Pradesh. He had, in the meanwhile, sought for an order of pay protection to ensure that the salary, emoluments and increments drawn by him would be reckoned while fixing him in the basic salary at the appropriate stage of the pay scale in the grade of Assistant Commandant.

2. The CISF by its letter dated 23.11.2004 rejected the petitioner's claim for pay protection entirely in the following terms:-

"2. With regard to above, it is informed that the case of above named officer was examined by the section concerned and vide their Note No. E-12011/22/97/Part 1/Hakdari/H-932 dated 18.12.2004 it has been informed that as per the provisions of Personnel & Training Department's office memorandum No.12/1/96-Establishment (Pay-1) dated 10.07.1998, the protection of last drawn basic pay is available to only those persons appointed in government service, who were working with Government Undertakings, State Undertakings, Universities, Semi Govt. Institutions/Autonomous Bodies etc. only through Interview. Whereas, Sh. N.K. Jha, Assistant Commandant has been appointed through Civil Service Examination conducted by the Union Public Service Commission and his pay is not entitled to be protected under the provisions of Personnel & Training Department's above-mentioned Memorandum dated 10.07.1998. Therefore, officer concerned may be informed accordingly."

3. It is claimed and so urged by the petitioner's counsel Mr Sandeep P. Agarwal that the stand of the CISF is unreasonable. In support of the contention, the learned counsel relies upon the Office Memorandum issued by the Department of Personnel and Training (DoPT) dated 07.08.1989.

4. The relevant extract of the said Office Memorandum reads as follows:

“The matter has been carefully considered and the President is pleased to decide that in respect of candidates working in Public Sector Undertakings, Universities, Semi-Govt. Institutions or Autonomous Bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and DA, as admissible in the Government will protect the pay + DA already being drawn by them in their parent organizations. In the event of such a stage not being available in the post to which they have been recruited, their pay may be fixed at a stage just below in the scale of the post to which they have been recruited, so as to ensure a minimum loss to the candidates. The pay fixed under this formulation will not exceed the maximum of the scale of the post to which they have been recruited. The pay fixation is to be made by the employing Ministries/ Departments after verification of all the relevant documents to be produced by the candidates who were employed in such Organizations.”

5. Counsel also cites upon a subsequent Office Memorandum dated 10.07.1998 which clarified that *“the benefit of pay protection under the above orders is available only, if the selection is through interview and not through an Open Competitive Examination. Wherever the protection under the above orders is to be given, the Commission will indicate in its recommendation letter to the Ministry concerned that pay of such candidate(s) should be fixed as per the guidelines laid down in the above orders.”*

6. It is pointed out that the above two Office Memoranda came up for consideration before a Division Bench of this Court in ***Sanjog Kapoor Vs. Union of India*** 2007(6) SLR 76. The Court had summarized the effect of the two Office Memoranda as follows:

“7. A candidate has to fulfil the following requirements to get the benefit of OM of 1989 and even of OM of 1998:-

(i) candidate must be working in Public Sector Undertakings, Universities, Semi-Government or Autonomous Institutions or Autonomous bodies.

(ii) Appointment should be as a direct recruit.

(iii) Selection should be through a properly constituted agency including departmental authorities making recruitment directly. OM of 1998 purported to exclude selection through an open competitive examination and restrict the benefit to selection through interview only vide OM of 1998.

(iv) Candidates should have completed the period of probation successfully in his parent organization though such a condition was not a part of original OM of 1989. It is the petitioner's case that he meets the above parameters. He was employee of a PSU and was directly recruited by UPSC, into the IRS. His selection procedure had interview as an important component and he had completed his probation period and was issued a certificate of deemed confirmation by VSNL.

7. In ***Sanjog Kapoor*** (*supra*), the Court held that the distinction made between one category of recruits, i.e., those interviewed and the other through competition examination was irrational and could not be given effect to in the following terms:-

“12. Considering that the reasons leading to the formulation of the OM in 1989 was to attract talent from PSUs etc by protecting their pay, we do not see as to how selection through interview alone would draw such talent and not selection through other open competitive examinations of which interview is an important element. Mr Kait appearing for the Union of India had sought to urge that the objective of attracting talent to government services is not achievable by extending the benefit of pay protection to those PSU employees who come through open competitive examination. Accordingly the UPSC in consultation with DoPT decided that the benefit should be confined to cases of selection by interview. He submitted that they had found the department indulging in anomalies where persons, who had participated and made it through open competitive examinations were given pay protection. This he said does not serve the purpose of attracting best talent and it would also be beyond the purview of the OA to go into the question of rationale for the policy. He further urged that order granting pay protection produced on record were of period prior to 10.7.1998.

16. In these circumstances, we hold that the distinction sought to be drawn between candidates selected from non government bodies through interview and those selected through open competitive examination is sans rationale justification. Protecting the pay of one and not protecting the pay of the other set of candidates is completely arbitrary and illogical. The purpose behind grant of pay protection was to draw talent from organisations like PSUs. The best talent is drawn through the Civil Services Examination. Encouraging employees of PSUs to sit for such examination which is highly competitive is in line with the purpose behind the OM of 1989 of attracting the best talent. Even assuming that for the purposes of pay protection, the distinction between selection through interview and selection through open competitive examination does hold a

rational nexus, the Civil Services Examination, through which the petitioner has been selected also comprises a comprehensive interview. Therefore denial of pay protection benefit to the petitioner is unjustified and illegal.”

Counsel for the respondent urges that the basic distinction made between those joining the service in a Government Department through interview on one hand and those recruited on the basis of Open Competition could not be ignored. This distinction was because of the subsequent Office Memorandum dated 10.07.1998 which had the effect of qualifying/clarifying the first memorandum dated 07.08.1989. This Court is of the opinion that on first principle, there is no dispute about the fact that the petitioner's previous employment fell within the covered category, i.e., was covered by the previous Office Memorandum dated 07.08.1989. The only question is whether the restriction imposed by the subsequent memorandum o 10.07.1998 applies. It is firstly noticed at the outset that the subsequent memorandum is only by way of a clarification; it does not purport to have been issued under the authority of the Central Government unlike the earlier memoranda which is expressly issued in the name of the President after due approval by the concerned Competent Authority. Secondly and more importantly, the recruitment process in the present case involved both the Open Competition Examination as well as an interview. Given that the clarification is restricted to open competition processes alone, the intent, if any, of the said clarification of 1998 cannot be stretched further to include hybrid processes where the candidate is successful in an open competition and also in the

qualifying interview. Furthermore, the restrictive nature of clarification of 1998, in our opinion, defeats the very purpose of 07.09.1989 Office Memorandum which was to ensure pay protection for all those who were directly recruited to a Central Government Organization or Department after having served in State Public employment or in autonomous bodies such as University, etc.

8. For the above reasons and following the decision in ***Sanjog Kapoor*** (*supra*), the petition has to succeed. A direction is issued to the respondents to give effect to the Office Memorandum dated 07.08.1989 and grant an appropriate pay protection in accordance with the guidelines taking into consideration the stage of pay drawn by the petitioner at the time he joined the CISF in taking into account the pay certificate dated 31.08.2004 relied upon in these proceedings. The process shall be completed within eight weeks. The arrears constituting the differential pay shall also be disbursed to the petitioner and consequential benefit of increments due to him for the intervening years too shall be released.

The writ petition is allowed in the above terms.

Dasti.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JANUARY 06, 2016
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