

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2780 OF 2016

1. Union of India
Through the Secretary,
Ministry of Defence (Navy)
South Block, New Delhi-110 001.

2. The Chief of Naval Staff,
Naval Headquarters,
DHQ, P.O. New Delhi-110 001.

3. The Flag Officer, Commanding-in-Chief
Headquarters, Western Naval
Command, Shahid Bhagat Singh
Road, Mumbai-400 001.

4. The Admiral Superintendent,
Naval Dockyard, Lion Gate,
Mumbai-400 023.

.....Petitioners

V/s.

Ajay Rambachan Bhatia (P. No.
83515-D), Working as Hostel
Superintendent, Naval Dockyard,
Naval Dockyard Apprentices School,
Group "C", Residing at Dockyard
Apprentices School Hostel and having
his permanent address as
Room No.406, Bach Devi Chawl,
Jawahar Nagar, Khar (East),
Mumbai-400 055.

.....Respondent

Mr. Vijay Kantharia, i/by. Mr. D.R. Shah, Advocate for the petitioners.

Mr. Abdul Rajjak I. Bhatkar, Advocate for the respondent.

CORAM :- SMT. V.K. TAHILRAMANI, &

SANDEEP K. SHINDE, JJ.

DATED :- 20TH JULY, 2017.

JUDGMENT :- (Per :- SANDEEP K. SHINDE, J) :

1. Rule. By consent, Rule is made returnable forthwith and the matter is heard finally.

2. Heard Learned Counsel for the petitioners and Learned Counsel for the respondent.

3. Union of India has preferred this petition against the order dated 14th August, 2014 passed by the Central Administrative Tribunal in O.A. No. 270 of 2012.

4. The facts giving rise to this petition to be stated, that respondent no.1 herein joined the Naval Armament Depot as a Canteen Supervisor in February, 2004. He came across an advertisement issued by the petitioners for filling up the post of Hostel Superintendent in the pay-scale of Rs.5,000-150-8,000. That vide order dated 15th December, 2008 the respondent was appointed as Hostel Superintendent in the pay-scale of Rs.5,000-150-8,000 (revised 9,300-34,900). On 18th February, 2009 he was communicated that the Flag Officer, Commanding-in-Chief, scaled down his pay to Rs.4,500-125-7,000. The respondent thereupon preferred a representation and pointed out that, he resigned from the previous service for betterment of his service conditions in view of the pay-scale given in the advertisement. His representation was not considered but vide order dated 26th March, 2009 he was informed that pay-scale in his appointment order has been amended. Resultantly, his pay-scale was reduced to Rs.4500-125-7000. It is the respondents case that, on 11th April, 2012 the Admiral Superintendent, Naval

Dockyard insisted for recovery of excess salary paid to him. In the aforesaid circumstances, he approached the Central Administrative Tribunal in O.A. No. 270 of 2012 and prayed that communication dated 16th February, 2012 and consequential amendment in his appointment order whereby his pay-scale was reduced, may kindly be quashed and set aside.

5. The respondents resisted the petitioner's claim contending that, by mistake wrong pay-scale was stated in the advertisement published in the employment news dated 21st - 27th March, 2009, however, they have corrected the mistake by issuing Corrigendum on 21st March, 2009. The petitioners have further contended that, they have every right to correct the mistake and accordingly they set right the position by issuing the Corrigendum followed by re-fixing the pay of the respondent herein and accordingly issued correct appointment order on 26th March, 2009.

6. That after hearing both the sides, the Central Administrative Tribunal was pleased to quash and set aside the impugned communication by holding the same was unjust, illegal and unsustainable and further ordered that the applicant, respondent herein be paid pay-scale of Rs.9,300-34,900 as mentioned in his letter of appointment dated 15th December, 2008. The petitioners were also directed to restore the above mentioned pay-scale of the respondent herein within 4 weeks from the date of the order.

7. Being aggrieved by the said order, the petitioners have approached this Court by filing this petition under Articles 226 and 227 of the Constitution of India.

8. Heard Learned Counsel for the petitioner and Learned Counsel for the respondent. The petitioner would contend that, the order dated 26th March, 2009 issued by the respondents whereby the pay-scale of the respondent

was revised, was strictly in accordance with the Statutory Recruitment Rules (SRO) and that the petitioners have every right to correct the mistake and the mistake cannot make any Government employee eligible for higher pay-scale. He would contend that, the mistake in the advertisement about the pay-scale was corrected and published on 21st - 27th March, 2009 of employment news and only thereafter the respondent was appointed on regular scale. He would contend that, the respondent was on probation from 15th December, 2008 to 14th December, 2010 and as such during this period the petitioner was not regularly appointed; however, well before that, the mistake was corrected in terms of the Statutory Recruitment Rules. He therefore contended, the Tribunal fell in error by quashing the impugned communication.

9. On the other hand, the Counsel for the respondent, supported the order of the Administrative Tribunal.

10. It is a matter of record that, advertisement was issued on 28th June, 2008; petitioner was appointed on 15th December, 2008 in the pay-scale of Rs.5,000-150-8,000 (as reflected in the advertisement, as well as, in the appointment order). The Corrigendum was issued on 23rd March, 2009 and respondent's pay-scale was re-fixed vide order dated 26th March, 2009. His revised pay-scale is Rs.4,500-125-7,000. On 16th February, 2012, the Headquarters, Western Naval Command directed recovery of the excess salary paid to the petitioner.

11. The petitioners herein had filed counter before the Tribunal and placed on record the communication dated 18th February, 2009 issued by the Ministry of Defence. Clause-2 of the said order reads as under :-

“2. After examining the details, it is intimated that revised pay-scale of Hostel Superintendent post (V) CPC implementation works out to Rs.4,500-125-7,000.”

It may be stated that, the petitioners herein had filed additional written statement before the Tribunal,

contending in para-4 as under :-

“4. The Recruitment Rules for the post of Hostel Superintendent was notified as SRO 307/1987 on 23-07-1987. Hereto annexed and marked Annexure R-1 is the copy of the said SRO. The Sr. No. which deals with the said post and the prescribed pay scale is Rs.425-15-560-EB-20-640. It is revised after pay commissions as under :

IV Pay Commission (01-03-1986) 1400-40-1800-EB-50-2300

V Pay Commission (01-01-1996) 4500-125-7000

VI Pay Commission (01-01-2006) 5200-20200 -G. Pay 2800”

. Besides, the respondents had also placed on record, pay-scale calculations of one, Mr. S.S. Shirsat who was eventually working as Hostel Superintendent. Learned Counsel thus contended that, it was genuine mistake on the part of the petitioners in prescribing pay-scale in the advertisement for the subject post. He would contend that, Mr. Shirsat who was also working as Hostel Superintendent was paid in pay-scale of Rs.4,500-125-7,000.

11. We have perused the Navy Group-C Non-Industrial (Miscellaneous Posts) Recruitment

Management Rules, 1987 which prescribes the pay-scale for the post of Hostel Superintendent and also essential clarification for the same. The record shows the prescribed pay-scale for the subject post was Rs.425-15-560EB-20-640. As against this, the respondent, (original applicant) has pleaded in the affidavit-in-reply of July, 2017 that the pay-scale was revised to Rs.1,400-2,300 w.e.f. 1st January, 1986 under the Fourth Central Pay Commission, which was upgraded to Rs.1,600-2660 and further replaced by pay-scale of Rs.5,000-8,000 w.e.f. 1st January, 1996. To substantiate his contention, the respondent has placed on record, pay-fixation proforma of Mr. Shirsat, Hostel Superintendent at Exhibit-C to his affidavit-in-reply. This pay-fixation proforma shows that the existing pay-scale of Rs.1,400-2,300 was revised to Rs.5,000-150-8,000. This pay-fixation proforma is dated 1st January, 1996. The contentions raised by the respondent, original applicant in his affidavit-in-reply of July, 2017 and the documents placed on record in support of it, was not countered or refuted and/or disputed by the

petitioner herein and more particularly, the pay-fixation proforma of Mr. Shirsat who was eventually working as Hostel Superintendent. This revision was effected from January, 1996. In the circumstances, the contention of the petitioners that pay-scale published in the advertisement dated 28th June, 2008 for the post of Hostel Superintendent was a mistake and further they have right to correct the mistake, cannot be accepted. There is one more reason to say so, i.e. vide communication dated 18th February, 2009 the Ministry of Defence directed the Flag Officer, Commanding-in-Chief to amend the original advertisement by issuing Corrigendum for the reason that the case was filed in CAT, Hyderabad for enhancement of pay-scale. The petitioners have not explained in the petition, what was the nature of the case pending in the CAT at Hyderabad and also as to why Corrigendum was required for defending the case at Hyderabad. The petitioners were duty bound to explain, how the pay-scale advertised at the first instance, was incorrect. Petitioners have not placed before us files containing notings before

issuing advertisement to ascertain the fact-in issue. The petitioners were duty bound to place on record, calculations to substantiate their decision to reduce the pay-scale from Rs.5,000-150-8,000 to Rs.4,500-125-7,000. In the given circumstances in the Corrigendum dated 21st March, 2009 issued in the employment news was issued not for correcting the mistake, but may for the reason, to meet some issues in the litigation in CAT at Hyderabad. In the fact situation, we are of the opinion that, the Tribunal has committed no error in exercise of the jurisdiction in allowing the claim of the respondent by judgment and order dated 14th August, 2014 passed in O.A. No.270 of 2012. Resultantly, the petition is dismissed. Rule is discharged with no order as to costs.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)