

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2083 OF 2004

Sardara Singh ... Petitioner.
V/s.
Union of India and ors. ... Respondents.

Mr. R.C. Kotiankar for the Petitioner.
Mr. Rui A. Rodrigues a/w. Mr. D.A. Dube & Mr.Upendra
Lokegaonkar for the Respondents/UOI.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE OF RESERVING THE JUDGMENT : 27th August 2018.
DATE OF PRONOUNCING THE JUDGMENT : 14th September 2018.

JUDGMENT: (PER M.S. SONAK,J.)

- 1] Heard learned counsel for the parties.
- 2] The challenge in this petition is to the judgment and order dated 25.7.2003 made by the Central Administrative Tribunal (CAT), Mumbai dismissing O.A. No. 448 of 2000 instituted by the petitioner seeking pay scale of Rs.5000-Rs.8000 on the grounds of parity with other Electrical Foremen in the Central Poultry Breeding Farm (CPBF) Department of Animal Husbandary, Union of India.

3] Mr. Kotiankar, learned counsel for the petitioner, submits that the post of Electrical Foreman is one of the posts in the Sub-ordinate Engineering cadres maintained by the Central Government. He submits that the Vth Central Pay Commission (CPC) had recommended and the Central Government has accepted the pay scale of Rs.5000-8000 to such posts in the common category of posts in the Sub-ordinate Engineering cadres of the Central Government. Therefore, denial of pay scale of Rs.5000-8000 to the petitioner who is admittedly an Electrical Foreman is patently illegal and unconstitutional.

4] Mr. Kotiankar submits that the Bangalore Bench of the CAT in case of ***M.F. Karim vs. The Director and anr. (O.A. No. 344 of 2002 decided on 20.3.2003)***, has in fact granted pay scale of Rs.5000-8000 to the applicant Shri. M.F. Karim, who was also a Electrical Foreman at CPBF itself. There is absolutely no distinction between the nature of duties and the work responsibility assigned to the Electrical Foreman in the CPBF itself. Therefore, denial of the same pay scale which is now paid to M. F. Karim, clearly amounts to hostile discrimination, not

to mention the breach of principle of equal pay for equal work as enshrined in Article 14 read with Article 39(d) of the Constitution of India.

5] Mr. Kotiankar submits that the petitioner was appointed as a Electrical Foreman by direct recruitment after he competed with several other eligible candidates. He submits that the recruitment rules provide for power of relaxation of such power was specifically exercised while appointing the petitioner as an Electrical Foreman. Once such power of exercise of relaxation is exercised while appointing the petitioner, the petitioner cannot be denied the pay scale otherwise prescribed for the post of Electrical Foreman upon spacious plea that the petitioner held no Diploma qualification at the time of his initial appointment. Mr. Kotiankar submits that the pay scale is applicable to a post and not to an incumbent holding the post at a given point of time. He submits that denial of pay scale of Rs.5000-8000, in such circumstances violates constitutional guarantees enshrined in Article 14,16 and 300-A. For all these reasons, Mr. Kotiankar submits that the impugned judgment and order warrants interference.

6] Mr. Rui Rodrigues, learned counsel for the respondent- UOI, submits that since the petitioner does not possess Diploma qualification, he cannot seek parity with Electrical Foreman M.F. Karim, who admittedly possessed the Diploma qualification. He points out that the decision of Bangalore Bench of the CAT is premised on the fact that M.F. Karim possessed the Diploma qualification and therefore, there was no justification to deny him the pay scale of Rs.5000-8000.

7] In any case, Mr. Rodrigues submits that it was a duty of the petitioner to place before the CAT the decision of Bangalore Bench which was delivered on 20.3.2003, i.e., much before the CAT made the impugned judgment and order dated 25.7.2003. Since this was never pointed out to Mumbai Bench of the CAT, the petitioner is not justified in complaining about any alleged inconsistent opinions delivered by the two Benches of the CAT.

8] Mr. Rodrigues submits that extension or otherwise of particular pay scale are essentially matters of policy and

therefore, the CAT was quite justified in exercising restraint as advised in several rulings of the Apex Court. For all these reasons, Mr. Rodrigues submits that this petition may be dismissed.

9] The rival contentions now fall for our determination.

10] There is no dispute whatsoever that the post of Electrical Foreman, *inter alia*, at CPBF, is one of the post which is included in the category of posts in the Sub-ordinate Engineering cadres maintained by the Central Government. There is also no dispute that the Vth CPC had in fact recommended the award of pay scale of Rs.5000-8000 to such common category of posts in the Sub-ordinate Engineering cadres maintained by the Central Government, which as noted earlier, includes the posts of Electrical Foreman at CPBF. There is also no dispute that such recommendation of the Vth CPC was accepted by the Central Government and in fact was being implemented insofar as the common category of posts in the Sub-ordinate Engineering cadres of the Central Government.

11] The petitioner has pleaded and the respondents including in particular, CPBF have not denied that there are three posts of Electrical Foremen in the CPBF (at Bangalore, Mumbai and Bhubaneswar). Mr. M.F. Karim, Electrical Foreman at CPBF (Bangalore) instituted O.A. No. 344 of 2002 before the Bangalore Bench of the CAT seeking pay scale of Rs.5000-8000 on the basis that this was the scale recommended by Vth CPC and accepted by the Central Government. The Bangalore Bench of the CAT by its detailed judgment and order dated 20.3.2003 accepted the case of M.F. Karim and directed that he be paid in the scale of Rs.5000-8000.

12] Mr. Kotiankar submits that the decision of the Bangalore Bench was in fact accepted by the CPBF/UOI and even implemented. Despite the matter being adjourned on earlier occasions to enable the learned counsel for the Union of India to obtain instructions on this aspect, there is no statement forthcoming, to the contrary. This means that in the CPBF itself, one of the Electrical Foreman, i.e., M.F. Karim is in receipt of scale of Rs.5000-8000, but the petitioner despite being in the

same post and discharging the same work was denied such scale.

13] The only reason put forth by the respondents for denying the pay scale of Rs.5000-8000 to the petitioner is that the petitioner does not possess the Diploma qualification while M.F. Karim, also Electrical Foreman at the CPBF, possessed such qualification. The Vth CPC had recommended the pay scale of Rs.5000-8000 in respect of certain category of posts, which admittedly includes the posts of Electrical Foreman at CPBF. Once the petitioner came to be appointed to the post of Electrical Foreman, may be, consequent upon relaxation of the requirement of possessing a Diploma, it would not be appropriate to deny the petitioner the same scale, which was being paid to the other Electrical Foremen in CPBF itself.

14] It is not even the case of the respondents that there was any illegality or even irregularity in the petitioner's appointment as Electrical Foreman way back from 1976 or 1980. To fall back upon the circumstance that the petitioner did not possess

Diploma qualification even though this requirement was specifically relaxed by the respondents themselves and on such basis deny the petitioner, the scale of Rs.5000-8000, which is admittedly the scale payable to Electrical Foreman at CPBF itself, will, according to us, involve hostile discrimination against the petitioner.

15] The appointments to the post of Electrical Foreman at CPBF are governed by the rules made by the President of India in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, which are called "*Central Poultry Breeding Farm (Electrical Foreman) (Group 'C' post) Recruitment Rules, 1976*" (for short "*said Rules*").

16] Rule 3 of the said Rules provides that the method of recruitment, age limit, qualifications and other matters relating to appointments to the post of Electrical Foreman shall be specified in Column No.5 to 13 of the Schedule annexed to the said Rules. Column '5' of the Schedule provides that the post of Electrical Foreman is a "*selection post*". Column '7' provides the essential qualifications for appointment to such post is Diploma

in Electrical/Mechanical Engineering from a recognised institution or its equivalent and three years experience in maintenance and repairs of large capacity engineering incubators and hatchers and operations and maintenance of standby diesel operated generators and other electrical and mechanical equipment like feed grinders mixers etc. used in large size poultry farms. To Column '5' is appended a Note, which states that the qualification shall be relaxable in case of candidates otherwise found suitable. Column '10' provides that the post is to be filled 100% by direct recruitment, failing which, by transfer, or deputation.

17] In addition to note below Column '7' of the Schedule annexed to the said Rules, Rule 5 of the said Rules in terms provides that where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.

18] The said Rules no doubt provide that the Diploma in

Electrical/Mechanical Engineering is a necessary qualification for appointment to the post of Electrical Foreman. However, the said Rules also specifically provide that this requirement shall be relaxable in case of candidates otherwise found suitable. There is also a general power of relaxation in Rule 5 of the said Rules.

19] There is no dispute that the petitioner was appointed as an Electrical Foreman, initially on temporary and ad-hoc basis with effect from 30.9.1976. The appointment on temporary and ad-hoc basis was possibly because, the petitioner did not possess the Diploma qualification and the issue of relaxation was pending with the competent authority. However, the competent authority by letter dated 8.1.1980 conveyed the approval for relaxation of the education qualification prescribed in the said Rules. On basis of such relaxation, the respondents vide Office Memorandum dated 19.1.1980 regularised the appointment of the petitioner as Electrical Foreman.

20] The aforesaid is evident from the Office Memorandum dated 19.1.1980, which reads as follows:

“NO.PF/SS/80/2308-2310
GOVERNMENT OF INDIA
MINISTRY OF AGRICULTURE & IRRIGATION
(DEPARTMENT OF AGRICULTURE)
CENTRAL POULTRY BREEDING FARM
Aarey Milk Colony,
GOREGAON (E),
BOMBAY - 400 065.
19TH January, 1980.

OFFICE MEMORANDUM

*Shri Sardara Singh, Assistant Foreman was promoted to the post of Electrical Foreman in the pay scale of Rs.425-700 with effect from - 30-9-1976 (F.N.) on purely temporary on adhoc basis; vide this office letter No.EST/3(ii)/76/1346-48 dated 30-9-1976. **The same has been regularised vide Ministry's letter No.26-18/76-LD II dated 8-1-1980 under which competent authority has conveyed the approval for relaxation of the educational qualification prescribed in the recruitment rules for the post of Electrical Foreman in favour of Shri. Sardara Singh.***

*Sd/-
(K.A. REDDY)
DIRECTOR”
(emphasis supplied)*

21] Once the petitioner was validly appointed as Electrical Foreman and once there is no dispute that the pay scale to the post of Electrical Foreman is Rs.5000-8000, such pay scale could not have been denied to the petitioner by falling back upon the circumstance that the petitioner did not possess Diploma qualification. The relaxation granted by the competent authority

was not merely for the purposes of appointing the petitioner to the post of Electrical Foreman but such relaxation would also ennure to the petitioner receiving the pay scale, otherwise applicable to the post of Electrical Foreman.

22] There is absolutely no dispute that at least the petitioner and M.F. Karim, Electrical Foreman at CPBF itself discharged the same duties with the same responsibilities. In such situation denial of pay scale of Rs.5000-8000 to the petitioner, particularly when such pay scale was ultimately extended to M.F. Karim does amount to practice of hostile discrimination against the petitioner.

23] The issue as to whether the petitioner was promoted to the post of Electrical Foreman or directly recruited to the said post is really not relevant for the controversy in the present petition. Mr.Rodrigues, learned counsel for the respondents, by reference to O.M. dated 19.1.1980 contends that the petitioner was promoted to the post of Electrical Foreman. However, the said rules, in terms of which the petitioner came to be appointed as

Electrical Foreman suggests that the petitioner's contention that he was direct recruited cannot be easily brushed aside. Column '5' of the Schedule to the said Rules provides that the post of Electrical Foreman is a "*Selection Post*". Column '10' of the Schedule to the said Rules provides that the post of Electrical Foreman had to be filled-in by direct recruitment, failing which, by transfer/deputation.

24] However, as noted earlier, the mode of appointment is not really relevant because admittedly, the petitioner came to be appointed as Electrical Foreman after the educational qualification prescribed in said Rules was specifically relaxed qua the petitioner. The benefit of such relaxation could not, therefore, have been restricted only for the purpose of appointment and not for the purpose of extension of the scale of Rs.5000-8000 applicable to the post. Once a person is validly appointed to a post, may be, by relaxing the educational qualification prescribed, there is no question of denying such applicable, the scale otherwise applicable to such a post.

25] It is true, as contended by Mr. Rodrigues that it would have been better if the petitioner had placed before the CAT the decision of the Bangalore Bench which was delivered on 20.3.2003. However, it is possible as contended by Mr. Kotiankar that the petitioner was not aware of this decision. In fact, since the Director of CPBF was a party to the proceedings before the Bangalore Bench, it was the duty of the respondents to place such decision before the Bombay Bench of the CAT for its consideration. In any case, since the respondent have accepted the decision of the Bangalore Bench of the CAT, it is only appropriate that the petitioner is also granted benefits on par with M.F. Karim, who was also an Electrical Foreman at CPBF itself.

26] The CAT, in the impugned order, has made reference to several decisions of the Apex Court, which advocate restraint in matters of determination of pay scales, particularly when expert body like pay commissions have already applied their mind to the issue and made their recommendation. The CAT has noted that the Apex Court has time and again held that the Courts and Tribunals should not interfere in such matters unless clear case

of hostile discrimination is made out.

27] The decisions referred to by the CAT were really not applicable in the facts and circumstances of the present case. The CAT, in the present case, was not really called upon to go into larger issue of determination of pay scales to the post of Electrical Foreman. The Vth CPC had already determined and recommended the pay scale of Rs.5000-8000 to the post of Electrical Foreman. The Central Government had already accepted such recommendation and commenced payment in such scale to Electrical Foreman. The issue involved in the present case was whether such scale could have been denied to the petitioner, even though, the petitioner was validly appointed as Electrical Foreman at the CPBF, particularly, when another Electrical Foreman at the CPBF was granted such scale of Rs.5000-8000. This was not a case where the petitioner was seeking some relief which fell within the realm of policy matters. Besides, as noted earlier, the petitioner has also made out a case of hostile discrimination. In these circumstances, the decisions of the Apex Court referred to by the CAT were really not applicable to the present case.

28] The CAT has also proceeded on the basis that the petitioner, only based upon his designation as "*Foreman*" was claiming parity with Foreman in other departments of the Central Government, even though, such other Foremen may have been governed by different set of recruitment rules, possibly providing for different set of educational or other qualifications. This was not the position. Besides, the CAT did not have the benefit of decision of Bangalore Bench, which had granted the pay scale of Rs.5000-8000 to an Electrical Foreman in the CPBF itself. Denial of same scale to the petitioner, would clearly sound in the arena of hostile discrimination.

29] For all the aforesaid reasons, we dispose of this petition with the following order:

(a) The impugned judgment and order dated 25.7.2003 is set aside;

(b) The respondents are directed to grant the petitioner pay scale of Rs.5000-8000 with effect from 1.1.1996 along with all consequential benefits like arrears of pay and allowances, differential pension etc.;

(c) The respondents are directed to compute the entitlement on the aforesaid basis and pay the arrears within a period of three months from the date of this judgment and order;

(d) In case, the arrears are not paid within time as stipulated above, the respondents shall be liable to be pay interest on such arrears at the rate of 6% per annum from the dates on which such amounts became due till the date of actual payment;

30] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)

(A.S.OKA, J.)

Dinesh
Sadanand
Sherla

Digitally signed
by Dinesh
Sadanand Sherla
Date:
2018.09.14
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