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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 25.10.2018

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Judgment delivered on: 19.11.2018

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W.P.(C) No.6284/2014

SANJAY KUMAR BHAMBRI

..... Petitioner

Through: Dr. L.S. Chaudhary, Mr. D.S. Chaudhary, Mr. Ajay Chaudhary and Mr. Parambir Singh, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondent

Through: Mr. Arun Bhardwaj, Adv. with Mr. Shashwat Sharma and Mr. Nikhil Bhardwaj, Advs. For UOI. Ms. Rachana Joshi Issar and Ms. Vandana Mishra, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner has preferred this writ petition to assail the order dated 18.02.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 91/2010. By the impugned order, the Tribunal dismissed the said original application preferred by the petitioner.

2. The said original application had been preferred by the petitioner to seek a direction to the respondents to re-fix his pay at the stage of Rs. 13,700/- in the IDA pay scale of Rs. 1300-350-18250 (E-3) w.e.f 01.10.2000. He also sought release of arrears of pay deducted for a day after every 180 days till he got his regular promotion as S.D.E. The petitioner sought reckoning of his seniority in the grade of his S.D.E. with effect from 31.03.1999. He claimed interest on arrears of pay @ 18% per annum.

3. Before we proceed, we may observe that on our query to the petitioner's counsel, whether the petitioner is pressing his relief for seniority, since seniority is relative and the petitioner has not impleaded any other employee vis-à-vis whom he claims seniority, learned counsel for the petitioner has made a statement, on instructions, that the petitioner does not presses his claim for seniority. Learned counsel for the petitioner has limited his submissions to the claim for re-fixation of his pay at the stage of Rs. 13,700/- in the IDA scale of pay w.e.f 01.10.2000 and the consequential reliefs arising from this primary relief.

4. The petitioner initially joined service in the erstwhile Department of Posts and Telegraph in the year 1983. On 01.04.1986 Mahanagar Telephone Nigam Ltd. (MTNL) was incorporated as a public sector company under the Companies Act. The operations of the DOT in relation to cities of Delhi, and Mumbai were transferred to the MTNL. The petitioner was appointed as a Junior Telecom Operator (JTO) on 20.04.1992 and continued to remain deployed on the same position even after the MTNL came into being, on the same terms and conditions.

5. The petitioner was issued a charge sheet on 31.12.1997 under Rule – 16 of CCS (CCA) Rules proposing to impose a minor penalty upon him. However, the charge sheet was withdrawn in the year 2001 and the case against him was closed. Options were called from the employees like the petitioner as to whether they would like to get permanently absorbed in the MTNL. Like many others, the petitioner opted to get absorbed in the MTNL. Consequently, on 23.12.2003, orders for absorption of the petitioner were issued retrospectively with effect from 01.10.2000.

6. Following the petitioner's absorption, the respondent issued an office order dated 22.03.2004 for introduction of IDA pay scales w.e.f. 01.10.2000 in replacement of the existing CDA pay scales ***“for Executives (Group B) absorbed from DOT/DTS/DTO in MTNL w.e.f. 01.10.2000”***. The petitioner, at the relevant time, was drawing a basic pay of Rs.8,000/- p.m. in the CDA pay scale of Rs.7500-250-12000. He had earned two increments of Rs.250/- each on the date of his absorption i.e. 01.10.2000. The petitioner claimed that since he had already drawn two annual increments in the CDA pay scales, the respondents should have given him two annual increments in IDA scale as well. He claimed that the respondents wrongly fixed his pay scale at Rs.13,000/- in the corresponding pay scale of Rs.13,000-350-18,250. He claimed that his basic pay should have been fixed – after grant of two annual increments of Rs.350/-, at Rs.13,700/- in E-3 pay scale w.e.f. 01.10.2000. He also sought release of the amount of Rs.15,792/-, which had been deducted from his salary on account of his reversion from STE to JTO for one day after 180 days, though no orders to that effect were passed or communicated to him.

7. The petitioner earlier preferred W.P.(C.) No. 14824/2004 before this Court which was transferred to the tribunal and registered as TA 213/2009. On 18.12.2009, the petitioner withdrew the transfer application with liberty to file a fresh O.A. after impleading Union of India as one of the respondents.

8. The present O.A. was initially allowed by the tribunal on 19.07.2010. The tribunal held that the petitioner would be deemed as SDE (TES Group B) on regular basis, for which he would be accorded all the benefits including seniority and IDA pay scale by MTNL within two months. The said order was challenged before this Court by MTNL in W.P.(C.) No. 7633/2010. On 22.11.2010, the writ petition was disposed of with the observation that if the petitioners (MTNL) were to seek a review of the order dated 19.07.2010, the same would be decided by the tribunal within the scope of its review jurisdiction. Consequently, the MTNL preferred review application no.5/2011, which was allowed by the tribunal on 29.08.2012. Thereafter, the present O.A. was listed for fresh adjudication.

9. The petitioner claimed that he had been granted adhoc promotion to the post of SDE w.e.f. 31.03.1999 and that he continuously worked in that post on adhoc basis. He was promoted as SDE on regular basis on 07.12.2001. Though, the promotion order was communicated on 30.01.2002, his regular promotion as SDE came within 64 days of his joining the said post on officiating basis and, consequently, he was never reverted back even for a single day as JTO.

10. Before us, the submission of learned counsel for the petitioner is that the terms and conditions for permanent absorption of DOT staff in the service of MTNL were communicated by MTNL vide communication dated 08.05.2000. He specifically places reliance on clause 2 (ix), which deals with “pay scales, perks and allowances”. Clause 2 (ix) of the provisional terms and conditions for permanent absorption, in so far as it is relevant, reads as follows:

“ix) Pay Scales, Perks and Allowances

The equivalent IDA pay scales applicable are as per Annexure ‘A’. These are provisional and subject to modifications, if necessary. The pay scales, perks and allowances as recommended by Justice Mohan Committee & duly approved by DPE vide Memo No. 2(49)/ 98- DPE (WC) dated 25.6.99 will be applicable for all Group A & B Officers, JTO’s JAO, JE (Civil) & JE (Elect.)

*There will be a uniform formula for the pay fixation and fitment in the various Grades Officers on their absorption in the MTNL drawing CDA pay scale will be placed in their respective equivalent IDA pattern scale of pay from the date of absorption and their pay in that scale on the IDA pattern will be fixed at the appropriate stage. **In short, the increment already drawn by them will be protected and they will be fixed in the IDA pay scale at the equivalent stage. Similarly, their Personal pay will be allowed to be protected and carried forward.....**” (emphasis supplied)*

11. Learned counsel submits that the office order dated 22.03.2004 issued by the respondent MTNL, whereby IDA pay scales were introduced w.e.f. 01.10.2000 in replacement of existing CDA pay scales, in para 2 – which deals with fitment method, provided as follows:

“2. Fitment Method:

The pay of the absorbed executives will be fixed in the respective replacement/ corresponding IDA pay scales after issue of Presidential order for absorption in the following manner:

(a) In respect of the DOT/ DTS/ DTO Group B officers, on absorption in MTNL w.e.f 01.10.2000, the basic pay of the executives as on 01.10.2000 in the IDA Pay Scales would be fixed at the stage corresponding to the stage at which they had reached under CDA Pay Scale on 30.09.2000 i.e. pay fixation will be on point to point basis”.

12. Learned counsel submits that the petitioner was drawing his pay on the date of absorption i.e. 01.10.2000 in the pay scale 7,500-250-12,000 in the existing CDA pay scale. The corresponding IDA pay scale for the same was 13,000-350-18,250 (E-3). Learned counsel submits that the petitioner had drawn two increments at the time of his absorption of Rs.250/- each and, consequently, the basic pay of the petitioner on 01.10.2000 was Rs.8,000/-. In this regard, he has placed reliance on the affidavit filed by the respondent MTNL before the tribunal dated 21.05.2014 sworn by Mr. Harbansh Shukla. Learned counsel submits that though the respondents have granted the corresponding IDA pay scale of 13,000-350-18,250 to the petitioner, his pay has not been fixed at the stage corresponding to the stage at which the petitioner had reached under the CDA pay scale on 30.09.2000. The pay fixation of the petitioner has not been done on point to point basis. Had that been done, he would have got the two increments from 01.10.2010 and his basic pay would have been Rs.13,700/- and not Rs.13,000/-, under the IDA pay scale.

13. The petition is opposed by the respondent MTNL. Ms. Rachna Joshi Issar, firstly, submits that the petitioner was holding the substantive post of JTO and he was not a substantive SDE on the date of his absorption i.e. 01.10.2000. In this regard, she has drawn our attention to the order dated 23.12.2003 whereby the petitioner was absorbed in the MTNL. She further submits that on account of pendency of the minor penalty proceedings, the petitioner was not initially granted a local officiation as SDE, when his contemporaries were so granted w.e.f. 31.03.1999. Consequent upon dropping up of the charges against the petitioner, with a view to place the petitioner at par with his contemporaries, he was promoted as SDE on local officiating basis retrospectively w.e.f. 31.03.1999. This order, inter alia, stated:

“Sh. S.K. Bhambri, JTO (JE-3589) working under GM (Central) is hereby promoted in the cadre of TES Gr. ‘B’ on local officiating basis w.e.f. 31.03.1999 and posted under GM (Central) as SDE.

This officiating arrangement shall not exceed 180 days and can be terminated at any time without assigning any reason.

The official will automatically be reverted for a day on or before completion of every 180 days of his local officiating promotion and he will be subsequently promoted after the break of a day till further orders from this office”.

14. Thus, the promotion was on local officiating basis and it could not exceed 180 days at a time. She submits that since the petitioner was granted promotion on local officiating basis retrospectively w.e.f. 31.03.1999 on notional basis, the actual break in officiation on expiry of 180 days could possibly not be effected in the case of the petitioner. As a matter of fact, the

petitioner did not officiate in the promoted post till issuance of the order dated 03.09.2001. Learned counsel further submits that the petitioner was promoted as SDE on regular basis on 24.01.2002. She submits that the pay scale attached to the substantive post of JTO in the CDA pay scale was 6,500-200-10,500. The pay of the petitioner as substantive JTO was 7,700 as on 01.10.2000 in the CDA pay scale. On implementation of the IDA pay scale, his pay became Rs.12,550/- in a substantive post as JTO. Consequently, on promotion as SDE (Officiating), the pay of the petitioner was fixed - by following the FR 22(1)(a)(i), at Rs.13,000. She submits that the pay of all the contemporaries of the petitioner were fixed on the same basis and she submits that all of them are satisfied with the said pay fixation apart from the petitioner. She submits that the petitioner has not been able to point out even a single case where the pay of a contemporary of the petitioner, who too got absorbed in the MTNL, was fixed in any other way.

15. Having heard learned counsel for the parties, perused the impugned order and the record, we are of the view that there is no merit in the present petition and the impugned order does not call for interference.

16. The date of absorption of the petitioner in the MTNL is 01.10.2000. He was drawing Rs. 7700/- as JTO, and Rs. 8000 basic pay in his officiating capacity as SDE.

17. Clause 2 (ix) of the terms and conditions of absorption very clearly provides that Officers who are absorbed in the MTNL “*drawing CDA pay scale will be placed in their respective equivalent IDA pattern scale of pay from the date of absorption and their pay in that scale on the IDA pattern*”

will be fixed at the appropriate stage. In short, the increment already drawn by them will be protected and they will be fixed in the IDA pay scale at the equivalent stage. Similarly, their Personal pay will be allowed to be protected and carried forward.”

18. Since the petitioner was in the existing pay scale of Rs. 6500-200-10,500 under the CDA pattern, he was entitled to the corresponding IDA pay scale of Rs. 10,750-300-16,750 (E2), and not IDA pay scale of Rs. 13,000-35-18,250 (E3), as claimed by him.

19. Reliance placed on paragraph 2 (a) of the office order dated 22.03.2004 is misplaced in as much, as the same is applicable to Group B officers – which the petitioner was not. The petitioner was a substantive JTO and he was only given notional officiation as SDO. He did not officiate as SDO till 03.09.2001, and he was promoted in the Cadre of TES Group “B” on local officiating basis with effect from 31.03.1999 vide communication dated 03.09.2001. It was only on 24.01.2002 that he was regularly promoted as SDE.

20. The stand taken by the respondents in their counter-affidavit, which the petitioner has not been able to refute is the following:

“ Petitioner who was holding the substantive post of JTO and his pay scale in CDA against the said post became Rs. 7,700/- as on 1.10.2000 in the CDA pay scale of Rs. 6500-200-10500 and, on implementation of the IDA pay scale in the case of the contesting respondent (in the substantive capacity), his pay became Rs. 12,550/- in the corresponding IDA pay scale of Rs. 10750-300-16750/-. The pay scale of the Petitioner on promotion as SDE (officiating) was fixed as per FR 22 (I) (a)(i)

at Rs. 13,000/- which is minimum of the pay scale for the post of SDE. It is submitted that the pay fixation in respect of all the contemporaries of Petitioner was done in identical manner”

21. Even the office order dated 22.03.2004 clearly states in clause 2(d) that the pay of executives who are officiating in higher grade on or before 01.10.2000 will be fixed in substantive/ regular grade as on 01.10.2000 and thereafter their pay in the higher grade will be fixed under normal FRs applicable to the promoted grade.

22. Pertinently, no other similarly situated employee had made a similar claim as the petitioner, obviously, on account of the fact that the same was not sustainable or justified.

23. For the aforesaid, we find no merit in the petition and dismiss the same leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

(A.K. CHAWLA)
JUDGE

NOVEMBER 19, 2018