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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4145/2018

PRADHYUMAN SHARMA

..... Petitioner

Through: Mr. Jagjit Singh Chhabra and Mr.
Saksham Maheshwari, Advocates.

versus

NATIONAL TECHNICAL RESEARCH ORGANIZATION

..... Respondent

Through: Mr. Arun Bharadwaj and Mr.
Nikhil Bhardwaj, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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02.12.2019

1. The Petitioner has challenged an order dated 5th December, 2017 passed by learned Central Administrative Tribunal (CAT), Principal Bench, New Delhi in OA No.1979/2015 which was filed by the present Petitioner. The operative portion of the said order reads as under:

“7. We find force in the submissions made by the respondents’ counsel. The applicant a highly educated person and having accepted the terms and conditions of his appointment as Officer on Special Duty, cannot be permitted to contend that he should be paid the salary of a Scientist ‘B’. It is not a case where a person was appointed in a particular post, on contract basis, and claiming the minimum pay, payable to a regularly recruited person, on the same post.

8. In *Selvaraj v. Lt. Governor of Island, Port Blair*, (1998) 4 SCC 291, on which the learned counsel for the applicant placed reliance, the appellant who was working in the lower post on regular basis was posted in the next promotional post and his salary was also drawn against the said promotional post, but when he was not paid the salary of the promotional post, the Hon'ble Apex Court, on the principle of 'quantum meruit', allowed the appeal. This decision has no application to the facts of the present case.

9. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA, and accordingly, the same is dismissed. No costs."

2. The present writ petition has been filed praying for the following reliefs apart from setting aside and quashing the impugned judgment dated 5th December, 2017:

"b. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 14.05.2015 passed by the Respondent;

c. Issue a writ, order or direction in the nature of mandamus or any other writ, order or direction that the respondent to fix the petitioner's pay as admissible to a regular Scientific Cadre Officer/Regular Scientist "B" w.e.f. his date of appointment and consequently direct the respondent to accord all consequential monetary benefits along with arrears;

d. Restrain the respondent from terminating the petitioner's services during the pendency of the present Writ Petition; and

e. Pass any such further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice."

3. In brief, the case of the Petitioner is that he is a qualified scientist working with the Respondent Organisation – NTRO as contractual employee since 2009. He was interviewed for scientific/technical post vide interview letter dated 25th March, 2009. He was issued appointment letter dated 9th June, 2009. The process of selection was initiated for scientific/technical post and Petitioner was selected for the same though nomenclatures mentioned in the appointment letter was ‘Officer of Special Duty’ (OSD). The Petitioner possesses necessary educational qualifications for being appointed to the post of Scientist ‘B’ as per recruitment rules. He was initially paid Rs.25,000/- per month. Subsequently, he was made to sign the contract/ agreement and Respondent has taken advantage of the oppressive clauses in the contract. The Petitioner wrote various representations to the Respondent for fixation of his pay as admissible to regular scientific cadre Officers on the principle of ‘Equal Pay for Equal Work’ as he is discharging the same functions as are being discharged by the scientific cadre Officers. The Petitioner was appointed against vacancy of OSD – Scientific, which is evident from APAR, recommendation certificate and duty rosters. His contract has been extended from time to time. Other similarly placed contractual scientific staff was being paid salary admissible to regular scientific employees but the Petitioner is not being paid the salary and benefits as admissible to regular scientific cadre Officers. He is getting the pay scale of technical cadre employee despite selected against the vacancy of scientific cadre Officer. Since, no response was received to his various memorandums, so the Petitioner filed OM No.1050/2015

before CAT and vide order dated 19th March, 2015 the CAT was pleased to direct the Respondent to consider the representation and dispose of the same in accordance with rules. The Respondents passed an order dated 14th May, 2015 rejecting the Petitioner's claim and being left with no other remedy, the Petitioner filed an OA No.1979/2015 before CAT. The Respondent filed counter reply to which rejoinder was filed by the Petitioner and the learned CAT vide impugned order dated 5th December, 2017 has dismissed the said OA without even going into and dealing with the stand of the Petitioner herein. Hence, the present writ petition has been filed challenging the dismissal of the OA as well as the act of the Respondent being arbitrary, unjustified and violative of principle of Equal Pay for Equal Work.

4. The petition was taken up for hearing on 25th April, 2018 when the following order was passed:

“1. As the petitioner impugns the order dated 05.12.2017, passed by the Central Administrative Tribunal dismissing his Original Application No.1979/2015 filed by him challenging the decision of the respondent to reject his claim for pay fixation as admissible to a regular Scientist ‘B’ with effect from the date of his appointment i.e. 18.06.2009 with all consequential benefits. In the first instance, he is directed to place on record the Recruitment Rules in respect of the post of Scientist ‘B’ for our perusal.

2. Needful shall be done within four weeks, with a copy of the other side.’

3. List on 23.08.2018.

4. In the meantime, learned counsel for the petitioner shall

give a written intimation of the next date of hearing to the counsel appearing for the respondent, NTRO before the Tribunal. Proof of intimation shall be kept handy on the next date of hearing.”

5. The main emphasis of the Petitioner is that he was appointed as per the recruitment rules for the post of Scientist ‘B’, so this Court had directed him to place on record the said recruitment rules. Till date, even after number of adjournments, no such rules have been placed on record by Petitioner.

6. We have heard arguments of both the parties and we have gone through the record. The Petitioner has relied upon his interview letter which is reproduced herein below:

“V (A)/14/24/2008-236
Government of India
National Technical Research Organization
Block-III, Old JNU Campus
New Delhi-110067

Dated the 25th March, 2009

Subject: Interview for the selection to the Scientific/Technical posts on contract basis in NTRO

With reference to his application for the aforesaid post Shri Pradhyumn Sharma is requested to report for an interview on Monday, the 30th March, 2009 at 10.30 Hrs at NTRO Office at J-16, Hauz Khas (Near IIT Flyover), Sri Aurobindo Marg, New Delhi- 110016.

2. He is requested to bring the following certificates/documents for submission at the time of interview:

- (i) Original 10th Class certificate in support of age.
- (ii) Original certificates with regard to academic/professional qualifications/experience.
- (iii) One set of attested copies of the above documents at (i) &(ii) above.
- (iv) One passport size photograph (self attested).

3. No TA/DA will be paid by NTRO for appearing in the interview. This letter may be brought in original at the time of the interview.

Sd/-
(Suresh Sharma)
Director (Estt-I)
Ph. No. 26161280”

7. It can be seen that nowhere in the said letter it has been mentioned by the Respondent NTRO that the interview is conducted for appointment to the post of Scientist ‘B’ in the said organisation. It is clear from the interview letter itself that some scientific/technical posts on contract basis have been offered. The Petitioner was selected vide order dated 9th June, 2009 of NTRO which is reproduced here under:

“Dated 9th June, 2009

ORDER

Approval of the Chairman, NTRO is hereby conveyed to the appointment of following persons as Officer of Special Duty in NTRO on contract basis for a period of two years with effect from the date(s) of their joining duties in NTRO or until further orders, whichever is earlier:-

S.No.	Name/S/Shri	Place of Posting
01	Atul Kumar	CIRA, NTRO
02	Ms. Priya Darshini	CIRA, NTRO
03	Kuldeep	CIRA, NTRO
04	Sunil Kumar	CIRA, NTRO

05	Pradhyuman Sharma	CIRA, NTRO
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Sd/-
(Suresh Sharma)
Director (Estt-I)”

8. The appointment letter itself makes it very clear that the Petitioner was offered the post of an OSD in NTRO on contract basis only for two years from his date of joining. There was no compulsion on the Petitioner to accept the said appointment if he was under the so-called bonafide impression that he had appeared for an interview for the post of Scientist ‘B’. The consolidated emoluments of the Petitioner and other selected employees were intimated to them vide order dated 9th July, 2009 as under:

“Dated 9th July, 2009

ORDER

In continuation of Estt-I’s order even number dated 30th May, 2009, the following contractual employees in NTRO will be paid consolidated emoluments at the rates mentioned against their names per month w.e.f. the date(s) of their joining duties:

S. No.	Name & Designation	Emoluments per month in Rs./-
01	Shri Atul Kumar, OSD, CIRA	35000 (fixed)
02	Shri J.S. Saikia, OSD, CIRA	27070
03	Shri Pradhyumn Sharma, OSD, CIRA	25000 (fixed)
04	Shri Sunil Kumar, OSD, CIRA	25000 (fixed)
05	Shri Rohit Srivastava, OSD, CIRA	25000 (fixed)
06	Shri Kuldeep Chauhan, OSD IDG	25000 (fixed)
07	Ms. Priya Darshini, OSD, CIRA	20000 (fixed)

Sd/-
(Suresh Sharma)
Director (Estt-I)”

9. Again, the Petitioner on his own accepted the said employment on the emoluments so mentioned and not even a single word has been mentioned that the appointments had been made as Scientist 'B' or the Petitioner and other selected candidates will be paid the salary of Scientist 'B'. As mentioned earlier, the Petitioner did not take any steps to file the recruitment rules of the Scientist 'B' on record so that his contention that he qualifies for the said post and, in fact, he had appeared for the interview for the said post may be appreciated in the light of the said recruitment rules. Nothing is on record to compare and to come to a conclusion that the tasks performed by the Petitioner are the same as are being performed by the Scientist 'B' selected in the Respondent NTRO. There is also nothing on record to show that there were any vacancies of Scientist 'B' in the said organisation at the relevant time.

10. It is not in dispute that the Petitioner has time and again requested the Respondent organisation to place him in the proper pay band of Scientist 'B' and he be given a proper designation but mere demand made by the Petitioner does not serve any purpose.

11. In the counter reply filed on behalf of the Respondent before CAT, it has been specifically mentioned that the Petitioner was offered contractual appointment in NTRO where he joined as Officer on Special Duty (OSD) on contract on 18th June, 2009 and he executed an agreement on the same date and as per the said terms and conditions he was being paid the consolidated amount of Rs.25,000/- per month. This contractual engagement was extended from time to time on the basis of functional

and operational requirements. The monthly emolument amount was enhanced to Rs.32,407/- with effect from 10th May, 2013. Contractual employees are free to serve necessary notice to NTRO to leave and they can also apply to other departments/organisations for their career progression. All the representations of the Petitioner were duly disposed of on 14th May, 2015 being devoid of any merits. This exercise was done in compliance to the order of the CAT dated 19th March, 2015. The applicant was never appointed as Scientist 'B'. Even in the APARs, the designation of the Applicant has been recorded as OSD. The contractual employees are not paid salary in any prescribed scale of pay. The willingness of the Petitioner on the terms of contract was not forced upon him. The other employees mentioned by the Petitioner are also being paid consolidated emoluments for their engagement as OSDs on contract.

12. The Petitioner has filed a rejoinder to the counter affidavit of the Respondents reiterating his stand that he was selected for the post of Scientist 'B' but the Respondent NTRO has wrongly designated him as an OSD. It is quite clear that the appointment of the Petitioner was made on contractual basis for the post of OSD and not as a Scientist 'B'. Merely stating in the petition that the Petitioner is performing the work of Scientist 'B' or he was interviewed for the post of Scientist 'B' does not lead us anywhere. The recruitment rules of the Scientist 'B' are not before the Court as the Petitioner has not filed the same in spite of being given number of opportunities to do so. The Court, on the basis of its own imagination cannot come to a conclusion that the duties performed by the Petitioner are similar to the Scientist 'B' appointed on regular

basis in the Respondent organisation or the Petitioner was interviewed against certain vacancies of Scientist 'B' which were lying vacant at the relevant time and the advertisement was issued to fill the said vacancies.

13. Learned counsel for the Petitioner has relied upon the following judgments to support his contention that he is entitled to equal pay for equal work:

i) ***Sabha Shanker Dube v. Divisional Forest Officer 2018 SCC Online Supreme Court 2440***. In the said judgment in para 3 it is mentioned as under:

“3. The Appellants are daily rated workers employed in Group 'D' posts in the Forest Department in the State of Uttar Pradesh.”

It means that the appointment in the said case were employed in Group D posts, i.e. regular posts in the Forest Department. In the present case, the Petitioner was not appointed against any regular post, rather he was appointed as an OSD on consolidated emoluments.

ii) ***State of Punjab and Others v. Jagjit Singh and Others (2017) 1 SCC 148***. In para 5 of the said judgment it is noted as under:

“5. The issue which arises for our consideration is: whether temporarily engaged employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay scale, along with dearness allowance (as revised from time to time) on account of their performing the same duties which are discharged by those engaged on

regular basis, against sanctioned posts?”

Again, it is clear that the temporarily engaged employees had been working against sanctioned posts, although not regularly employed. In the present case, the Petitioner is not working against any regular post. Hence, he cannot claim parity with Scientist ‘B’ as he was engaged as an OSD on consolidated monthly emoluments.

iii) *Uttar Pradesh Land Development Corporation and Another v. Mohd. Khursheed Anwar and Another (2010) 7 SCC 739*. In para 3 of this judgment it is mentioned as under:

“3. The respondents, who are graduates in engineering applied for being employed under the Corporation as Assistant Engineers. They were interviewed by the Selection Committee along with other eligible persons and were adjudged suitable for employment on contract basis for completion of ‘Million Wells Scheme’.”

Here, in this case, the Respondents were employed as Assistant Engineers on contract basis. In the present case, there is no such occasion that the Petitioner was employed as Scientist ‘B’ against a regular vacancy but on contract basis. Rather the Petitioner was appointed as an OSD on contractual basis and parity cannot be claimed with Scientist ‘B’.

iv) *Government of National Capital Territory of Delhi & Ors. v. V.S. Chauhan 1998 SCC Online Del 657*. In para 6 of the said judgment it is mentioned as under:

“6. It is also not disputed before us that the respondent doctors possess the required educational qualifications and

the training for discharging duties as Junior Medical Officers. The nature of their duties are, admittedly, similar to the regularly appointed doctors.”

Hence, it is clear that in this case, the Doctors were appointed on temporary basis but they were discharging the duties as Junior Medical Officers similarly to the regularly appointed Doctors. In the present case, no such document has been brought on record to show as to what are the duties being performed by the Scientist ‘B’ viz-a-viz the duties performed by the present Petitioner. Hence, the judgment is of no help to the Petitioner.

14. In view of the above, the CAT was right in relying upon the judgment of Hon’ble Supreme Court in *State of Punjab & Anr. v. Surjit Singh and Others* (Civil Appeal No.1976/2003 decided on 4th August, 2009) and coming to a conclusion that there is no merit in the OA and accordingly the same was dismissed.

15. Hence, there is no merit in the present writ petition and the same is hereby dismissed.

S. MURALIDHAR, J

TALWANT SINGH, J

DECEMBER 02, 2019

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