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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 25.02.2019

Pronounced on: 04.04.2019

+ W.P.(C) 10217/2016

BIJENDER SINGH MEENA

..... Petitioner

Through: Mr. Raj Singh Phogat, Adv.

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Prateek K. Chadha, Adv. for R-1.

Mr. Vinay Sabharwal, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner has challenged the order dated 30.03.2016 by which the respondents has rejected the representation of the petitioner to grant the benefits and arrears of pay fixation of selection grade pay of ₹3100 w.e.f. 07.06.1996 and pay revision based on that. He further seeks upgradation as per the approval of the Board of Directors in their resolution No.68.2.4 & 65.2.4 dated 12.03.2014. He also seeks benefits of TBPS (Time Bound Promotional Scale) as given to the other similarly placed employees of the IPGCL with financial benefits as a consequences of

quashing the order dated 30.03.2016.

2. The case of the petitioner is that the petitioner is the erstwhile employee of the Delhi Vidyut Board and was appointed on the post of Turner/Machinist on 07.06.1996 in the pay scale of ₹1200-2190. The petitioner was granted first TBPS in the pay scale of ₹ 5500-8650 after completion of the ten years service vide office order F.6(110)AM (HR)-III/IPGCL/06-07/523 dated 03.08.2006 which was further revised to ₹ 10900-34800 with grade pay of ₹ 3600. On 07.11.2012, the Board of Directors vide resolution No.62.2.13 and 59.2.9 had approved the unified rules of promotion as well as rationalization of scales/grade pay of posts in IPGCL/PPCL. Para 3.4 and 3.6 of the bid resolution is reproduced below:

“Para 3.4 of Board Resolution- In the agenda placed before the Board, it was proposed to operate three basic grades i.e. grade pay of Rs 2800, Rs 3500 & Rs 4200 as functional grades and it was also proposed that 30% of the sanctioned strength of lower grade may be placed in the higher Pay Band (Selection Grade). However, it is now proposed that only Rs 3100 Grade Pay may be treated as Selection Grade & all the employees (as against 30% proposed earlier) who meet the basis eligibility of Promotion may be granted the grade pay of Rs 3100 on completion of 5 years of regular service, subject to fitness by DPC. This is similar to what has been approved by BOD for executive cadre.”

Para 3.6 of Board Resolution- “The effective date of promotion of the Selection Grade is after completion of 5

years from date of entry in the GP of Rs. 2800/-, therefore, it would have retrospective effect. However, if the date of entry into the grade of ₹. 2800/- is prior to the date of unbundling i.e. 01.07.2002, it would be counted from the date of unbundling only. All functional promotions would be granted prospectively from the date of approval of the recommendations of DPC. In case of retrospective promotion, fixation benefit would be given from the retrospective date; however, no arrears for the period shall be paid and employees will draw higher Basic and Grade pay prospectively from the date of issuance of order.”

3. Accordingly, the petitioner was re-designated as Fitter Mechanic Grade-II in the pay band of ₹ 8500-26300 in grade pay of ₹ 3100 w.e.f. 07.06.1996 as per unified rules of promotion as well as rationalization of scales/grade pay/posts in IPGCL/PPCL by the office order No. Manager (HR)III/IPGCL/12-13/161 dated 20.03.2013 with the approval of the Board of Directors vide Board Resolution No.62.2.13 and 59.2.9 dated 07.11.2012. Thereafter, the respondents vide office order No. Manager (HR)-III/12-13/15 dated 06.05.2014 has placed seven employees of Annexure P-4 from serial No.01 to 07 from W-4 level (₹ 8500-26300+3100 GP) to W-5 level (₹ 10900-34800+3600 GP) leaving behind the petitioner at W-4 level (₹ 8500-26300+3100 GP). Thus the respondents had seriously discriminated the service conditions of the petitioner.

4. Learned counsel appearing on behalf of the petitioner submits that in

reply to the representation made by the petitioner, the respondents stated that the office order No. Manager (HR)-III/12-13/15 dated 06.05.2014 applies to the substantive promotion and not to the time scale promotion. Thus, the respondents has treated the substantive promotees and the time scale promotees differently though, however, having same post/pay scale/duties, thus violated the rights of the petitioner under Articles 14, 16 & 21 of the Constitution of India.

5. It is further submitted that the respondents in the Resolution No.2.2 have kept Grade pay of ₹ 2200, ₹ 2400, ₹ 2800, ₹ 3100, ₹ 3600 etc. contrary to the guidelines of the pay commission and the Government of Delhi and NCR. As the petitioner has been placed in the pay scale of ₹ 8500-26300 in the grade pay of ₹ 3100 w.e.f. 07.06.1996 by the office order dated 20.03.2013 (Annexure P-4) as well as office order dated 27.11.2014 (Annexure P-5) whose corresponding pay scale in the 5th CPC is ₹ 4200-100-9100 which has been again revised to the pay scale of ₹ 10900-34800 of grade pay of ₹ 3600 in the 6th CPC in the IPGCL. Thus, the petitioner is entitled the pay scale of ₹ 10900-34800 of grade pay of ₹ 3600 since 07.06.1996 and consequential TBPS and upgradation.

6. On the other hand, learned counsel appearing on behalf of the

respondents submits that after rendering 10 years of service, the petitioner was granted 1st TBPS w.e.f. 07.06.2006 in the pay scale of ₹ 10900-34800 + ₹ 3600 GP (pre-revised to ₹ 5500-8650) vide order dated 03.08.2006. A Unified Promotion Policy has been introduced on 07.11.2012 where the similar nature of the posts/cadres of PPCL and IPGCL were grouped together. This grouping of posts/cadres have been done to bring uniformity in Cadres of IPGCL and PPCL. Accordingly, Machinist/Turner (existing only in IPGCL) cadre was bunched with Mechanical cadre (existing both in PPCL and IPGCL).

7. He further submits that the hierarchy of the machinist/turner cadre before and after bunching was as under:

Level	Grade Pay	Before UPP	After UPP
A	B	C	D
W-5	3600	Sr. Machinist	Machinist / Turner Gr.-I (earlier Sr. Machinist)
W-4 (SG)	3100	No equivalent post	Fitter(M) Gr-II (SG)
W-3	2800	Machinist / Turner	Fitter (M) Gr-III

8. Thus the Machinist/Turner had been erroneously bunched with W-4 level whereas the correct level was W-3 for a Machinist/Turner. The post of Machinist/Turner (before unified promotion policy) was in the level of W-3 with the grade pay of ₹ 2800/- which was renamed as Fitter M Grade-III

after Unified Promotion Policy. The rationalization of grade pay is to be done by adding/deducting equivalent amount from the basic pay so there is no net gain/loss to the employees. The post of Machinist/Turner bunched at W-4 level so that for promotion to next level will not be affected. The same was communicated vide office order dated 29.01.2013. Later, on representation of some Turner/Machinist, the cadre was debunched from Mechanical Cadre and its separate channel of promotion had been created as under:

Level	Grade Pay	Existing Promotion Rule	After UPP
W-5	3600	Sr. Machinist	Machinist / Turner Gr-I (earlier Sr. Machinist)
W-4 (SG)	3100	Turner / Machinist (DR)*	Machinist / Turner Gr-II (SG) (earlier Turner / Machinist)
W-3	2800	No equivalent post	Machinist / Turner Gr-III

9. Learned counsel further submits that this creation of separate channel was done with the approval of Board of Directors IPGCL vide resolution No.68.2.4 & 65.2.4 dated 12.03.2014 and the same was communicated vide office order dated 06.05.2014 subject to all the conditions that will remain same as per office order dated 29.01.2013.

10. He further submitted that this post was inadvertently shown in this cell along with remark of (DR) i.e. direct recruitment. Later on, the post of

Turner/Machinist which were inadvertently shown in the wrong cell along with the remarks of Direct Recruitment has rectified with the approval of Board of Directors of IPGCL vide office order dated 14.06.2017 and the same is as under:

Level	Grade Pay	Existing Promotion Rule	After UPP
W-5	3600	Sr. Machinist	Machinist/Turner Gr-I (earlier Sr. Machinist)
W-4 (SG)	3100	No equivalent post	Machinist/Turner Gr-II (SG)
W-3	2800	Turner / Machinist (DR)	Machinist/Turner Gr-III (earlier Turner/Machinist)

11. Accordingly, a provisional seniority list was issued on 15.09.2014 and the final seniority list dated 27.11.2014 that de-bunching of Machinist/Turner Grade-II(SG) from Fitter (Mechanical) Grade-II (SG) was done vide office order dated 06.05.2014 and shall be applicable from the date of Board of Directors approval i.e. 12.03.2014. In the seniority list, the grade pay was erroneously shown as ₹ 3100/- whereas the proper grade pay for the petitioner was ₹ 2800/-. The date of initial appointment was shown as 07.06.1996, therefore, the petitioner has claimed that the grade pay of ₹ 2100/- may be granted to him w.e.f. 07.06.1996 (on the basis of provisional seniority list), nevertheless, in the final priority list, it is clearly mentioned that Machinist/Turner Grade-II (SG) (as per BoD meeting dated 12.03.2014)

in the pay band 8500-26300+ ₹ 3100/- GP (earlier Turner/Machinist in the pay band ₹ 8500-26300+₹ 2800 GP.

12. It is further submitted that the abovementioned error was rectified and an office order dated 16.06.2017 mentioning the corrected promotion rules, therefore, there is no merit in the present petition and the same deserves to be dismissed.

13. I have heard learned counsel for the parties and perused the material on record.

14. Fact remains that the Board of Directors on 07.11.2012 vide Resolution No.62.2.13 and 59.2.9 approved unified rules of promotion as well as rationalisation of scales/grade pay/posts in IPGCL/PPCL.

15. In para 3.4 of the said resolution, it is proposed that only ₹ 3100/- grade pay may be treated as selection grade and all the employees (as against 30% proposed earlier) who meet the basic eligibility of promotion may be granted the grade pay of ₹ 3100 on completion of 5 years of regular service, subject to fitness by DPC.

16. In para 3.6 of the resolution, it is mentioned that the effective date of promotion of the Selection Grade is after completion of 5 years from the date of entry in the GP of ₹ 2800/-, therefore, it would have retrospective

effect. However, if the date of entry into the grade of ₹ 2800/- is prior to the date of unbundling i.e. 01.07.2002, it would be counted from the date of unbundling only. Therefore, all functional promotions would be granted prospectively from the date of approval of the recommendations of DPC. In case of retrospective promotion, fixation benefit would be given from the retrospective date, however, no arrears for the period shall be paid and employees will draw higher Basic and Grade pay prospectively from the date of issuance of order.

17. It is not in dispute that the petitioner was re-designated as Fitter Mechanic Grade-II in the pay band of ₹ 8500-26300 in the grade pay of ₹3100 w.e.f. 07.06.1996 as per rules of Unified Rules of Promotion as well as rationalization of scales/grade pay/posts in IPGCL/PPCL by the office order dated 20.03.2013 mentioned above with the approval of the Board of Directors vide Board Resolution No.62.2.13 and 59.2.9 dated 07.11.2012. Thereafter, vide office order dated 06.05.2014, the respondents had placed seven employees of Annexure P-4 from serial No.01 to 07 from W-4 level to W-5 level leaving behind the petitioner at W-4 level. However, there is no explanation to this effect. Further, the respondents in the Resolution No.2.2 have kept Grade pay of ₹ 2200, ₹2400, ₹ 2800, ₹ 3100, ₹ 3600 etc. contrary

to the guidelines of the pay commission and the Government of Delhi and NCR.

18. In the case of *Union of India vs. Atul Shukla: AIR 2015 SC 1777* whereby the Hon'ble Supreme Court has held that there can be no differential treatment between an employee directly recruited vis-a-vis another who is promoted. So long as the two employees are a part of the same cadre, they cannot be treated differently either for purposes of pay and allowances or other conditions of service, including the age of superannuation. The underlying principle is that so long as the officers are a part of the cadre, their birth marks, based on how they joined the cadre is not relevant. They must be treated equal in all respects i.e. salary, other benefits and the age of superannuation.

19. As discussed above, the petitioner was re-designated as a Fitter Mechanic Grade-II in the pay band of ₹ 8500-26300 in the grade pay of ₹3100 w.e.f. 07.06.1996 as per rules of Unified Rules of Promotion as well as rationalization of scales/grade pay/posts in IPGCL/PPCL by the office order dated 20.03.2013 mentioned above with the approval of the Board of Directors vide Board Resolution No.62.2.13 and 59.2.9 dated 07.11.2012. Thereafter, vide office order dated 06.05.2014, the respondents had placed

seven employees of Annexure P-4 from serial No.01 to 07 from W-4 level to W-5 level leaving behind the petitioner which was discriminatory and arbitrary order of the respondents. As the petitioner was placed in the pay scale of ₹ 8500-26300 in grade pay of ₹ 3100 w.e.f. 07.06.1996 by the office order dated 20.03.2013 as well as office order dated 27.11.2014 whose corresponding pay scale in the 5th CPC is ₹ 4200-100-9100 which has been again revised to the pay scale of ₹ 10900-34800 of grade pay of ₹ 3600 in the 6th CPC in the IPGCL. Thus, the petitioner is entitled the pay scale of ₹ 10900-34800 of grade pay of ₹ 3600 since 07.06.1996 and consequential TBPS and upgradation.

20. In view of above discussion and the settled position of law, I hereby quash the memorandum dated 30.03.2016 passed by the respondents. Consequently, the petitioner is entitled to the benefits and arrears of pay fixation of selection grade pay of ₹ 3100 w.e.f. 07.06.1996 and pay revision with further upgradation as per the approval of the Board of Directors in their resolution No.68.2.4 and 65.2.4 dated 12.03.2014.

21. I hereby make it clear that petitioner is also entitled to the benefits of TBPS at par with other similarly placed employees of IPGCL.

22. The directions passed by this Court shall be complied with within four

weeks from the receipt of this order.

23. In view of above, the petition is allowed and disposed of, accordingly.

(SURESH KUMAR KAIT)
JUDGE

APRIL 04, 2019/ab

