

19.07.2023
11
AN/Ct. No.07

WPA 3503 of 2022

**Ratna Sen
versus
Union of India & ors.**

Mr. Soumya Majumder
Mr. Victor Chatterjee
Ms. Mayuri Ghosh

... for the petitioner

Mr. Kumar Jyoti Tewari
Ms. Rashmi Bothra

... for the U.O.I.

The petitioner has challenged the order of the Director of National Institute of Locomotor Disability (Divyanjan) (for short, the Institute) dated 27.12.2021. The said order was passed pursuant to the order passed by the Coordinate Bench on 17.11.2011 in WPA 15366 of 2021. The Director of the Institute by the order dated 27.12.2021 communicated to the petitioner that her case was referred to the Ministry and the Ministry vide letter dated 18/19.01.2017 has informed that the upgradation of certain posts including that of Pathology Technician was not agreed upon by the Department of Expenditure. Taking such aspect into consideration, the submission made by the petitioner in writing on 14.12.2021 was rejected.

Mr. Majumder, learned counsel for the petitioner submits that the petitioner was holding the post of

Pathology Technician till the date of her superannuation. She superannuated from her service of the Institute on 31.12.2021. Mr. Majumder submits that in course of hearing before the authorities on 14.12.2021, the petitioner submitted a written submission wherein she had ventilated two-fold grievances, firstly, that she was not been awarded the requisite grade pay corresponding to the pre-revised scale of pay of Rs. 6500-10,500/- as on 19.12.2008 with two ACPs. Mr. Majumdar submits that though the petitioner was entitled to the minimum grade pay of Rs. 4600/- but the petitioner was given the grade pay of Rs. 4200/- with effect from 01.01.2006. In support of such contention, Mr. Majumder drew the attention of the Court to the decision of the Director of the Institute dated 22.03.2010 to support his submission that the Director accorded sanction of the minimum scale of pay to resolve the discrepancy to the respective post with effect from 19.12.2008 without any claim for arrears as per the decision of the E.C. Meeting held on 19.12.2008. He also refers to the Office Memorandum dated 13.11.2009 which is annexed to the affidavit-in-reply in support of this contention that the petitioner was to be placed in the grade pay of Rs. 4600/-.

Per contra, Mr. Tewari, learned counsel representing the Union of India submits that the impugned order of the Director of the Institute dated 27.12.2021 was passed in terms of the order dated 17.11.2011, passed by a

Coordinate Bench in WPA 15366 of 2021. He submits that the Coordinate Bench directed the Director of the Institute to pass a reasoned order and the order contains the reasons as to why the prayer of the petitioner was not acceded to. Thus, he submits that the writ petition is not maintainable and liable to be dismissed.

Heard the learned counsel for the parties at length and perused the materials placed.

After going through the order dated 17.11.2011 passed by the Coordinate Bench in WPA 15366 of 2021, it appears that the contention of the petitioner that she was entitled to the pay scale of Rs. 9300-34,800/- with grade pay of Rs. 4600/- being the basic pay for (Pay Band-2, Gr.-B) from 01.01.2006. It was further recorded therein that the petitioner sought for a direction upon the respondents to decide on the recommendation of the Minutes of the Meeting of the Pay Anomaly Committee dated 10.11.2016. From the Minutes of the Meeting of the Pay Anomaly Committee, it appears that the representation of the petitioner that she belonged to an isolated post and that the similarly placed Officers in other Institutes are holding different designations with higher pay was considered and it was decided to refer her case on such issue to the Ministry to consider higher grade pay and change of designation of the Pathology Technician as Technical Officers. The Ministry thereafter by its order dated 18/19.01.2017 did not agree with the contention for

upgradation of various posts including that of Pathology Technician. The petitioner has however not challenged such decision of the Ministry dated 18/19.01.2017.

Mr. Majumder, on instruction, submitted that at present, the petitioner is not pressing her claim for upgradation of the posts with higher scale of pay. After going through written submission dated 14.12.2021, it appears that such representation was basically on two-fold issues. One was that the petitioner was entitled to the grade pay of Rs. 4600/- instead of Rs. 4200/- and the other issue was with regard to the recommendations of the Pay Anomaly Committee. Insofar as the recommendation of the Pay Anomaly Committee is concerned, this Court has already observed that the petitioner has not challenged the decision of the Ministry dated 18/19.01.2017 and, therefore, the order dated 27.12.2021 does not call for any interference insofar as the prayer for upgradation of post is concerned.

However, the petitioner has now restricted her claim with regard to her entitlement of grade pay of Rs. 4600/- instead of Rs. 4200/- which was granted in her favour. It does not appear from the order dated 27.12.2021 that any decision on the issue of grade pay as observed hereinbefore has been taken by the authority concerned. Such issue is, however, left open to be decided by the authority. This Court, therefore, directs the Director of the Institute being the 4th respondent to consider the prayer of

the petitioner with regard to her entitlement of grade pay of Rs. 4600/- as ventilated by her in the written submissions dated 14.12.2021 and pass a reasoned order. The Director while taking a decision shall take into consideration the Office Memorandum dated 13.11.2009 and/or any relevant circulars or memorandums applicable to the case of the petitioner as well as the order of the Director dated 22.03.2010. The petitioner will be at liberty to make a fresh representation before the 4th respondent on the issue of the petitioner's eligibility as to the grade pay, as observed hereinbefore within one week from the date of receipt of the server copy of this order. The said authority shall consider the written submission dated 14.12.2021 only restricted to the issues indicated hereinbefore as well as the representation to be made in terms of this order and pass a reasoned order as expeditiously as possible but positively within a period of eight weeks from the date of receipt of the server copy of this order. It is needless to mention that in such representation, the petitioner will be entitled to raise any other grievances excepting the issue with regard to upgradation of posts with higher scale of pay which was rejected by the Ministry by the decision dated 18/19.01.2017.

With the above observations and directions, the instant writ petition stands **disposed of**.

There shall be, however, no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)