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

\+ W.P.(C) 6326/2022

DHARAM VEER SINGH .....Petitioner

Through: Ms. Sangeeta Sondhi, Mr. Daksh Jain, Advocates along with Petitioner in person.

versus

NATIONAL RESEARCH DEVELOPMENT CORPORATION .....Respondent

Through: Mr. Aldanish Rein, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **19.09.2024**

1. This writ petition has been preferred on behalf of the Petitioner seeking quashing of the decision taken by National Research Development Corporation ('NRDC'), communicated to the Petitioner vide order dated 17.02.2022, whereby representation dated 29.06.2021 given by the Petitioner for 10% enhancement of remuneration, has been rejected and remuneration has been approved only for the period from 04.02.2020 to 30.06.2021 and that too at a reduced rate of 3% amounting to Rs. 22,764/-. A writ of mandamus is sought for a direction to NRDC to pay an amount of Rs. 7,06,769/- to the Petitioner on account of arrears calculated by taking into account 10% enhancement of remuneration on each extension of the contract, in terms of clause 1 of the advertisement dated 15.07.2015 along with 12% interest.

2. Factual matrix to the extent relevant and necessary and as narrated in

the writ petition is that Petitioner was in regular service of NRDC for 14 years from 16.01.1997 to 30.06.2011 and superannuated from service on 30.06.2011. NRDC issued an advertisement on 15.07.2015 inviting applications for one post of Law Officer/Consultant to be filled on contract basis initially for a period of one year, extendable annually, based on the requirement and need of NRDC. As per the advertisement, the remuneration payable was Rs. 45,000/- per month with 10% enhanced remuneration every year on extension of the contract, based on satisfactory performance of the employee. Looking at the terms and conditions of appointment for the post of Law Officer/Consultant including Clause 1 which provided for 10% enhanced remuneration annually, Petitioner applied for the said post and was engaged vide appointment letter dated 01.02.2016. Petitioner's contract was extended annually from time to time till 30.06.2021, on which day he was relieved having attained the maximum prescribed age of 70 years. Petitioner was, however, not paid as per clause 1 of the advertisement and he therefore, represented from time to time seeking enhanced remuneration which after deduction of the payments received was Rs. 7,06,769/-. Not getting a favorable response, Petitioner filed the present writ petition.

3. Ms. Sangeeta Sondhi, learned counsel appearing on behalf of the Petitioner submits that the advertisement against which the Petitioner had applied and was appointed, provided that the engagement was purely temporary on contract basis and subject to extension on satisfactory performance @ 10% enhanced remuneration every year and therefore, the Petitioner was entitled to increase in remuneration annually on extension of the contract up to 30.06.2021. She also draws the attention of the Court to an Office Order dated 31.08.2020 issued by NRDC whereby 10% enhanced

remuneration was sanctioned on each extension, the last one being from 03.02.2020. Therefore, according to the Petitioner it is unjust and unfair to deprive him of the enhancement in the remuneration which was an integral part of the terms and conditions of his engagement by NRDC.

4. Learned counsel for the Respondent on the other hand, relying on the counter affidavit, argues that Petitioner is not entitled to 10% enhancement in remuneration annually on extension of the contract period. Terms and conditions of service were governed by the engagement letter dated 01.02.2016 which nowhere provided 10% enhancement of remuneration every year and in fact, it was specifically stipulated in clause 10 thereof that NRDC reserved the right to renew or extend further engagement at its discretion based on performance and need. Petitioner is bound by clause 13 of the engagement letter where it was categorically mentioned that he shall not file any Court case regarding salary and regularization. On completion of the initial one year period of the contract, case of the Petitioner was taken up for extension from year to year but at no point there was any assurance that the extension was subject to enhancement of 10% in the remuneration. In a nutshell, the argument is that if the engagement letter did not provide for 10% enhanced remuneration annually, Petitioner cannot predicate his case on an advertisement as the engagement letter will override any stipulation in the advertisement.

5. Heard learned counsels for the parties and examined their rival submissions.

6. Indisputably, NRDC issued an advertisement on 15.07.2015 inviting applications for filling up one post of Law Officer/Consultant, purely on contractual basis, initially for a period of one year at a fixed remuneration of

Rs.45,000/- per month. Being successful, Petitioner was engaged for a period of one year on need basis vide letter dated 01.02.2016. As per record, Petitioner's contract was extended annually from time to time and the last extension was for the period 04.02.2021 to 30.06.2021 and he was relieved thereafter on attaining the maximum prescribed age of 70 years.

7. Petitioner was paid a fixed remuneration of Rs. 45,000/- throughout his engagement, without any enhancement and he thus made several representations to NRDC requesting for enhancement, as per terms of his engagement. One such representation dated 23.07.2020 is placed on record. Based on the representation and after due deliberations a note was put up to the then CMD of NRDC for approval for enhancement in remuneration, which culminated into issuance of an Office Order dated 31.08.2020, whereby the annual enhancement @ 10% was sanctioned. However, despite this the differential amount was not released to the Petitioner. By the impugned email dated 17.02.2022 Petitioner was informed that he was only entitled to a sum of Rs. 20,487/- towards the arrears of salary after deduction of Rs. 2,277/- towards TDS and the said amount was credited into his account. This according to the Petitioner was illegal as enhancement was given only for the period from 04.02.2020 to 30.06.2021 and that too at a reduced rate from 10% to 3%.

8. The only question that this Court is called upon to decide is whether NRDC was obliged to enhance the remuneration payable to the Petitioner @ 10 % on extension of the contract annually. The terms and conditions for the post of Law Officer/Consultant were stipulated in the advertisement itself and clause 1 which is extracted hereunder for the ease of reference, provided that: a) engagement will be purely temporary on contract basis; b) contract

was extendable on the basis of satisfactory performance; and c) 10% enhanced remuneration was payable every year:-

> *"Terms & Conditions: -*
>
> *1. The engagement will be purely temporary on contract. However, it may be extended on the basis of satisfactory performance at 10% enhanced remuneration every year.*
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> *..............."*

9. Therefore, there can be no doubt that Petitioner was entitled to 10% enhanced remuneration each time the contract was extended based on his satisfactory performance. The argument on behalf of NRDC that the engagement letter only provided a consolidated remuneration of Rs.45,000/- per month and did not provide for enhancement in remuneration is misconceived and cannot be a ground to deny the enhanced remuneration. No doubt, the terms and conditions stipulated in the appointment letter are binding both on the employer and the employee and have a sanctity in law. But it cannot be argued by NRDC that the terms and conditions stipulated in the advertisement are meaningless. It needs no reiteration that when an advertisement is issued in the public domain an aspiring candidate is only guided by the stipulations in the advertisement to ascertain what would be the terms and conditions of a service, if appointed, with respect to status/nature of employment, period of employment, salary/allowances etc. and depending on the terms reflected in the advertisement takes a decision to apply, if the terms are suitable. Can it then be said that terms and conditions provided in the advertisement would have no meaning and the answer is in the negative. If the engagement letter had any term of appointment which was contrary to the advertisement and was accepted by the Petitioner, NRDC may have had a case, but in the present case there is no clause in the

engagement letter which runs contrary to clause 1 of the advertisement and none has been shown by the counsel for NRDC.

10. Learned counsel for NRDC emphasized on clauses 10 and 13 of the engagement letter to counter the argument of the Petitioner, however, in my view these clauses do not aid NRDC. Clause 10 which reads as *'The Corporation reserves the right to renew of extend further engagement at its discretion on the basis of performance and need'*, does not deal with the aspect of remuneration at all and only provides that renewal or extension of the engagement will be at the discretion of NRDC and based both on performance and need. Clause 13 prevents the Petitioner from filing any Court case regarding salary and regularization but again does not deal with enhanced remuneration. Clause 13 to my mind may prevent the Petitioner from litigating with respect to salary but cannot prevent him from seeking something which is provided for in the advertisement. Petitioner only seeks enforcement and implementation of clause 1 of the advertisement and, save and except, clause 5 of the engagement letter which provides for a consolidative remuneration of Rs.45,000/- per month, which was also mentioned in the advertisement, there is no clause which impedes the grant of 10% enhanced remuneration to the Petitioner, which was payable in terms of clause 1 of the advertisement. In my view, there is no conflict between the advertisement and the engagement letter.

11. It is pertinent to note that even NRDC understood that the 10% enhanced remuneration was payable to the Petitioner and this is reflected from the Office Order dated 31.08.2020, whereby 10% enhancement was sanctioned for the period between 03.02.2017 to 03.02.2020 by the Competent Authority. For ease of reference the document is scanned and

placed hereunder:-

NATIONAL RESEARCH DEVELOPMENT CORPORATION

Ref: NRDC/82G408/2020

Dated: 31st August, 2020

OFFICE ORDER

Sub: **Sanction of increments to Shri D.V. Singh, Consultant (Legal) engaged on contractual basis.**

Shri D.V. Singh, Consultant (Legal) has been sanctioned annual increments on completion of each year as detailed below:-

Date of increment		Rate of increment	Enhanced Remuneration
3.2.2017	-	@ 10% of existing	Rs.49,500 p.m.
3.2.2018	-	@ 10% of existing	Rs.54,450 p.m.
3.2.2019	-	@ 10% of existing	Rs.59,900 p.m.
3.2.2020	-	@ 3% of existing	Rs.61,700 p.m.

Arrears due to Shri D.V. Singh, Legal Consultant may be calculated and paid to him accordingly.

This is issued with the approval of Competent Authority.

(Gurcharan Singh)
Pers. & Admn. Officer

Copy to:-

1. Shri D.V. Singh, Consultant (Legal)
2. Manager (Finance)
3. Personal file
4. Office Order file
5. CMD – for kind information

12. For the aforesaid reasons, this writ petition is allowed quashing the impugned decision of NRDC rejecting the request of the Petitioner to pay the 10% enhanced remuneration, communicated vide email dated 17.02.2022. Petitioner is held entitled to 10% enhancement in the remuneration for the period commencing from 03.02.2017 till the date he

was relieved from the service of NRDC. As per the averments/documents in the writ petition, the amount due to the Petitioner is Rs.7,06,769/-, out of which a sum of Rs.20,487/- after deducting Rs.2,277/- towards TDS has been paid. The balance amount shall be released to the Petitioner within a period of 6 weeks from today along with interest @ 6% per annum from the date the amount is due till the date of actual payment.

JYOTI SINGH, J

SEPTEMBER 19, 2024
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