



2024:DHC:9922-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 7537/2016****LOKESH MEHTA**

.....Petitioner

Through: Mr. M. K. Bhardwaj, Mr. Maria
Mugesh Kannan H. and Ms. Priyanka M.
Bhardwaj, Advs

versus

UNION OF INDIA & ANR

.....Respondents

Through: Mr. T. P. Singh, Sr. Centre
Govt. Counsel for UOI.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****JUDGMENT (ORAL)**

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18.12.2024**C. HARI SHANKAR, J.**

1. The petitioner was appointed as Assistant Executive Engineer¹ in the Department of Telecommunications on 25 March 1988. He was promoted as *ad hoc* Executive Engineer (Civil) in 1992 and was regularly promoted as Executive Engineer² on 18 July 1996.

2. The 5th Central Pay Commission³ recommended that the pre-revised non-functional scale of EE of ₹ 4500-5700/- be revised to a functional scale of ₹ 14300-18300/-, applicable to Superintending Engineer⁴ and for replacing of the earlier non-functional scale by an

¹ "AAE" hereinafter

² "EE" hereinafter

³ "CPC" hereinafter

⁴ "SE" hereinafter



intermediate non-functional scale of ₹ 12000-16500/-.

3. Following this, the Department of Personnel & Training⁵ issued an Office Memorandum on 6 June 2000, recommending that the functional grade of ₹ 14300-18300 be made applicable to the post of SE and that on completion of 13 years' regular service in Group A with 4 years in the scale of ₹ 12000-16500/-, the employee would be entitled to the scale of ₹ 14300-18300/-.

4. This OM was subsequently modified by OM dated 20 December 2000. Para 3(a) of the earlier OM dated 6 June 2000, as modified on 20 December 2000, read thus:

“Sub-para 3(a)

The ‘functional’ grade of Rs. 14300-18300 will be applicable to the posts of **Superintending Engineer** and equivalent. Executive Engineer and equivalent may be eligible to be considered for promotion to the grade of Superintending Engineer and equivalent only on completion of nine years of regular service in the grade of Executive Engineer and equivalent, including regular service, if any, rendered in the non-functional second grade for the Executive Engineer and equivalent in the pay-scale of Rs. 12000-16500. Placement of personnel in the functional grade of Rs. 14300-18300 will, however, be subject to actual availability of vacancies in the grade.”

5. Plainly read, the modified para 3(a) of the OM dated 6 June 2000, now made the scale of ₹ 14300-18300/- applicable to the post of SE. *Additionally*, the OM stated that an Executive Engineer or a person holding an equivalent post could be considered for promotion as SE or to an equivalent post on completion of nine years regular

⁵ “DOPT” hereinafter



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service in the grade of EE or equivalent, subject to actual availability of vacancies in the functional grade of ₹ 14300-18300/-.

6. Subsequent thereto, on 4 July 2002, the petitioner was promoted as *ad hoc* SE. However, the order of promotion stated that the pay scale of the petitioner would be clarified thereafter. The Tribunal has noted that the promotion was against a clear vacancy, and this position is not disputed by the respondent.

7. Subsequent thereto, on 6 January 2005, the respondent issued an order, to the effect that the officers promoted as SE on *ad hoc* basis would be placed in the scale of ₹ 12000-16500/-, subject to a later decision regarding their eligibility for the scale of ₹ 14300-18300/-.

8. We may note here, the submission of Mr. Singh, learned Counsel for the respondent, that the petitioner had acquiesced to the fixing of the scale of ₹ 12000-16500/- by the order dated 6 January 2005 and that he only chose to claim a scale of ₹ 14300-18300/- w.e.f. the date of his *ad hoc* promotion as SE on 4 July 2002 in his Original Application which he subsequently filed before the Tribunal.

9. Inasmuch as the order dated 6 January 2005 only tentatively granted the scale of ₹ 12000-16500/-, subject to later clarification regarding the entitlement of the petitioner to the scale of ₹ 14300-18300/- w.e.f. the date of *ad hoc* promotion as SE, the plea of acquiescence, in our view, cannot sustain.



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10. Subsequently, by the following order dated 1 August 2013, the respondent withdrew the scale of ₹ 14300-18300/- granted to the petitioner w.e.f. 18 July 2005:

“OFFICE MEMORANDUM

The Undersigned is directed refer to the Vigilance Cell, DOT U.O. Note No. 4-4/2010- VM.I dated 10.08.2012 regarding grant of Functional Scale of Rs. 14,300-18,300 to Sh. Lokesh Mehta, SE(C) adhoc in the year 2005 when disciplinary proceedings had been initiated and the officer was not clear from Vigilance angle.

2. The matter has been examined in this office in consultation with Department of Personnel & Training and CVO, DOT and on the basis of advice, the Competent authority has decided to withdraw the Functional Scale of Rs. 14,300-18,300/- granted to Sh. Lokesh Mehta, SE(C) with effect from 18.07.2005.

3. It is requested to take necessary action accordingly.

(Nithali Ram)

Under Secretary to the Government of India
Tel. 23372350”

11. In the aforesaid circumstances, the petitioner approached the Tribunal by way of OA 2742/2013 with two prayers. The first prayer was a challenge to the order dated 1 August 2013 by which the earlier granted scale of ₹ 14300-18300/- w.e.f. 18 July 2005 was withdrawn. The second prayer sought a direction to the respondent to grant the petitioner the scale of ₹ 14300-18300/- from the date of his *ad hoc* promotion as SE on 4 July 2002.

12. The Tribunal has dismissed the OA, on the following reasoning:

“15. In this background, if one takes first of the above conditions, the applicant does not fulfill the condition of 13 year



service in Group 'A' as part of 13 years, he was in ad hoc service and not regular service (between his ad hoc promotion as Executive Engineer in 1992 and regular promotion on the said post on 15.07.1996). Therefore, though he completed 4 year regular service as Executive Engineer on 15.07.2000, became 13 years is not regular service but part ad hoc, the applicant does not satisfy the first condition. In case the second condition of nine years of regular service in the grade of Executive Engineer and equivalent is taken, again 9 years of regular service is not complete as 2002 onwards he is on ad hoc service. Even if for arguments sake the 9 years period is counted, he becomes eligible on 18.07.2005 but by that time, on 22.12.2004 he has already been issued a charge sheet and hence he cannot be granted Non-Functional Selection Grade of Rs. 14300-18300. Therefore, looking at it from all possible angles, the applicant is not entitled to the Non-Functional Selection Grade of Rs. 14300-18300.

16. From para 3 (e) of OM dated 6.06.2000, it will be clear that the placement of officers in the 'functional' grade of Rs. 14300-18300 has to be done by the process of 'Selection by Merit' for which the composition of DPC (including association of the Union Public Service Commission) for appointment of officers to the posts of Superintending Engineers and equivalent in the 'functional' grade of Rs.14300-18300 shall be the same as already prescribed in the relevant Service/Recruitment Rules for appointment to the erstwhile 'functional' grade in the pay scale of Rs. 12000-16500 (pre-revised Rs.3700-5000) and, therefore, a departmental proceeding being pending against the applicant, he could not have been appointed against the Non-Functional Selection Grade of Rs. 14300-18300 in 2005.

17. In view of above discussion, it also becomes clear that the eligibility of the applicant from 2002 cannot be accepted for the reason that part of 13 years service is not a regular service. In the light of these facts, we find that the OM dated 1-08.2013 is in accordance with law and rules and thus the relief sought by the applicant cannot be granted.

18. On the question of recovery of arrears, the judgment in Rafiq Masih (supra) will apply as pointed out by the learned counsel for the applicant. Recovery from an employee when the excess payment has been made for a period in excess of five years before the order of recovery is issued is impermissible in law.

19. Therefore, while order dated 1.08.2013 cannot be disturbed, the respondents are directed not to recover any amount from the applicant beyond the period of five years i.e. for the period before



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1.08.2008. With the above directions, the OA is disposed of.”

13. We have heard Mr. Bhardwaj, learned Counsel for the petitioner and Mr. Singh, learned Counsel for the respondents at length. Apart from the plea of acquiescence, with which we have already dealt earlier, Mr. Singh places reliance on the clarification obtained from the DOPT to the effect that the scale of ₹ 14300-18300/-, as per the DOPT OM dated 6 June 2000 as amended on 20 December 2000, was available only to persons who had completed nine years of regular service in the grade of Executive Engineer. He further submits that, as the petitioner had not been cleared from vigilance angle, he could not have been granted the scale of ₹ 14300-18300/- on 8 July 2005.

14. He also places reliance on para 3(b) of OM dated 6 June 2000 as amended on 20 December 2000, which reads thus:

“Sub-para 3(b):

It is likely that functional promotions to posts of Superintending Engineer and equivalent may be possible in some of the organised Group 'A' Engineering Services before completion of the eligibility service prescribed at sub-para 3(a) above because of the cadre structure of individual services. Members of Services so promoted will continue to remain only in the scale of pay of Rs. 12000-16500 till they become eligible for the scale of Rs. 14200-18300 in terms of sub-para 3(a) above. They will, however, be entitled to the benefit of pay fixation under FR 22 (I)(a)(i) on promotion. This benefit will not be available again on their placement in the scale of Rs. 14300-18300.”

15. The submission of Mr. Singh, as tendered before us, in our view, misinterpret Clauses 3(a) and 3(b) of the OM dated 6 June 2000



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as amended on 20 December 2000.

16. Neither of these submissions commences itself to acceptance.

17. The opening sentence in the amended para 3(a) of the OM dated 6 June 2000 clearly entitles persons holding the post of SE to the scale of ₹ 14300-18300/-.

18. The subsequent observation is with respect to the entitlement of Executive Engineers *to promotion* to the grade of SE. Para 3(b) of the OM also deals with the entitlement to the promotion to the grade of SE. Inasmuch as the petitioner was, in fact, promoted as SE on 4 July 2002 against a clear vacancy and that order of promotion has never been reversed at any point of time, we are of the opinion that the petitioner was entitled *ipso facto* to the scale or ₹ 14300-18300/-.

19. Mr. Singh, at this point points out that the promotion was only *ad hoc*. To our mind, there is no principle of law by which an *ad hoc* promotee gets a lower scale of pay than a regular promotee. A person who is promoted to the scale of SE is entitled to the existing scale of SE which, on the date of his promotion was ₹ 14300-18300/-.

20. The petitioner was, therefore, correct in his submission that he was entitled to the scale of ₹ 14300-18300/- w.e.f. 4 July 2002 when he was promoted as SE. We also note that the promotion was against a clear vacancy.



21. We may also note, in this context, that the OM dated 6 June 2000 was subsequently amended by OM dated 29 December 2010, which has been noted by the Tribunal in the impugned order. The terms of the said OM read thus:

“14. The 27.10.1997 order of the respondents incorporated in it 13 year condition (para 1 above). Then the OM dated 6.06.2000 modified this to 13 year service in Group 'A' and 4 year regular service in Non-Functional Selection Grade for Executive Engineers (Rs.12000-16500). Then came the modification dated 20.12.2000 by which the condition was made of completion of 9 year service and equivalent. Finally, vide OM dated 29.12.2010, there are two conditions included, fulfilling of either of which will entitle a person to functional grade of Rs.14300-18300. The following are the conditions:

"This shall be permitted only on completion of thirteen years of regular service in Group A' and regular service of four years in the grade of Executive Engineer and equivalent including the service rendered in the Non-Functional Second Grade

Or

nine years of regular service in the grade of Executive Engineer and equivalent, including regular service, if any, rendered in the Non-functional Second Grade for the Executive Engineer and equivalent in the pay-scale of Rs.12000-16500.”

22. According to the OM dated 29 December 2010, a person who had completed 13 years of regular service in Group A with at least 4 years regular service in the grade of EE was entitled to the scale of ₹ 14300-18300/-.

23. The Tribunal has held the petitioner not to be entitled to the benefit of this OM only for the reason that the petitioner was holding *ad hoc* service as EE for a period of 4 years.



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24. Mr. Bhardwaj has pointed out that, while so observing, the Tribunal has failed to note that the earlier post of AEE, which was held by the petitioner, was also a Group A post. Inasmuch as the petitioner had been promoted as AEE in 1988, the petitioner clearly qualified the requirement of 13 years of service in Group A for the purposes of the OM dated 29 December 2010. As such, whether viewed from the point of the OM dated 6 June 2000 as amended on 20 December 2000 or from the point of view of the OM dated 29 December 2010, the petitioner's claims for being granted the functional scale of ₹ 14300-18300/- from the date of his promotion as SE on 4 July 2002 has merit.

25. Insofar as the recovery order dated 1 August 2013 whereby the petitioner's scale was downgraded is concerned, it is clear that the said order was passed without any notice to the petitioner. Besides, there is no principle of law by which recovery of the scale granted to a person holding a post can be downgraded merely because there is some enquiry pending against the petitioner or that the person is not clear from vigilance angle. It is nobody's case that any disciplinary proceedings were initiated against the petitioner resulting in any order of punishment lowering his pay scale.

26. In that view of the matter, we are of the opinion that the prayers of the petitioner in the OA are entitled to succeed.

27. Accordingly, we set aside the impugned order dated 6 October 2015 of the Tribunal. OA 2742/2013, as well as the present writ



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petition, stand allowed in terms of the prayers contained in the OA.

28. There shall be no order as to costs.

C.HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.
DECEMBER 18, 2024 R/ar
Click here to check corrigendum, if any