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

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Date of Decision: 16th August, 2024+ **W.P.(C) 10782/2017****SURENDER KUMAR SHARMA**

.....Petitioner

Through: Mr. Apurb Lal and Mr. Daleep Singh,
Advocates.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD**(GOVT. OF NCT OF DELHI)**

.....Respondent

Through: Mr. Parvinder Chauhan, Advocate.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking a direction to the Respondent/Delhi Urban Shelter Improvement Board ('DUSIB') to grant Grade Pay of Rs.7,600/- in Pay Band-3 (Rs.15,600-39,100) to the Petitioner w.e.f. 05.02.2013 and accordingly re-fix his pension and other retiral dues.
2. Facts to the extent necessary and averred in the petition are that Petitioner joined Slum Wing of Delhi Development Authority ('DDA') as Lower Divisional Clerk ('LDC') on 01.11.1974 and after passing the SAS examination, was selected as an Accountant on 22.03.1990. Slum Wing of DDA was transferred to Municipal Corporation of Delhi ('MCD') w.e.f. 01.09.1992 on "as is where is basis".

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3. Petitioner was charge sheeted on 20.01.2006 while working as AAO, however, he was finally exonerated after an inquiry on 27.07.2012. On exoneration, Petitioner made a representation on 01.08.2012 to DUSIB seeking restoration of his status and regularization as well as promotion to the next post, which had been denied to him due to pendency of disciplinary proceedings. On 23.08.2012, one Sh. Subhash Chandra, Senior Accounts Officer was taken on deputation from Finance Accounts Department, GNCTD by DUSIB on the post of Deputy Controller of Accounts ('Deputy C.A.') and assigned current duty charge on the higher post of Budget and Finance Officer ('B&FO') vide order dated 13.09.2012. Another officer Sh. Yogender Kumar Aggarwal was also taken on deputation on 06.11.2012 as Deputy C.A. but was assigned the current duty charge on the post of B&FO.

4. Petitioner avers that he was promoted as Senior Accounts Officer on 04.01.2013 in the pre-revised pay scale of Rs.8,000-13,500 w.e.f. 01.01.2005 and subsequently promoted as Deputy C.A. in PB-3 (Rs.15,600-39,100) with Grade Pay of Rs.6,600/- w.e.f. 01.07.2010. A representation was made by the Petitioner on 18.01.2013 seeking promotion to the post of B&FO at par with the junior officers brought on deputation. On 05.02.2013, Petitioner was assigned current duty charge on the post of B&FO. Sh. H.S. Nanra was promoted to the post of Deputy C.A. in PB-3 with Grade Pay of Rs.6,600/- on *ad hoc* basis vide order dated 13.09.2013 and upon his joining the said post w.e.f. 04.10.2013 on deputation in DUSIB, his pay was fixed as Rs.27,030/- + Grade Pay of Rs.6,600/-.

5. Petitioner retired on 31.07.2014 on attaining the age of superannuation and learnt that pay of Sh. H.S. Nanra was fixed on the post of B&FO in the Grade Pay of Rs.7,600/- vide office order dated 08.09.2014.

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Petitioner also represented on 22.12.2014 seeking fixation of his pay with Grade Pay Rs.7,600/-, which was rejected and the rejection was communicated to him vide letter dated 15.01.2015. Application was made on 30.06.2015 under Right to Information Act, 2005 seeking information with regard to the date of joining of Sh. H.S. Nanra, his grade pay for the post of B&FO, DUSIB etc., after which a legal notice was sent by the Petitioner on 08.09.2016 claiming Grade Pay of Rs.7,600/- at par with Sh. H.S. Nanra. The legal notice was acknowledged by DUSIB but Petitioner's claim was rejected on the ground that he did not fulfill the eligibility condition for appointment to the post of B&FO as per which a Deputy C.A. was required to have five years service in the said grade before he was considered for the post of B&FO. Petitioner was informed that since he was appointed as Deputy C.A. w.e.f. 01.07.2010 and had retired on 31.07.2014, he did not have the requisite five years service before his retirement and accordingly, his case was not considered for the post of B&FO. Aggrieved by the rejection of his claim for Grade Pay of Rs.7,600/-, Petitioner approached this Court.

6. Mr. Apurb Lal, learned counsel for the Petitioner argues that junior of the Petitioner namely, Sh. H.S. Nanra, Senior Accounts Officer was brought on deputation to DUSIB and given the appointment of Deputy C.A. w.e.f. 04.10.2013 vide order dated 15.10.2013. He was given current duty charge against a vacant post of B&FO and his pay was fixed with a Grade Pay of Rs.7,600/- vide office order dated 08.09.2014 and there is no plausible reason why the same treatment should not be meted out to the Petitioner. There is thus discrimination and violation of Article 14 of the Constitution of India.



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7. It is urged that the reason for denial of the Grade Pay of Rs.7,600/- to the Petitioner, as evident from the response to his legal notice was that he did not complete five years service in the post of Deputy C.A. and was ineligible for appointment to the post of B&FO and since the Grade Pay of Rs.7,600/- was the Grade Pay of the higher post, Petitioner's pay cannot be fixed in the said Grade Pay. If this reason is accepted as correct, it is not understood how Grade Pay of Rs.7,600/- was granted to Sh. H.S. Nanra who was appointed as Deputy C.A. on *ad hoc* basis on 13.09.2013 and also did not complete five years when he was granted the Grade Pay of Rs.7,600/- by DUSIB vide office order dated 08.09.2014.

8. Mr. Parvinder Chauhan, learned counsel appearing on behalf of DUSIB, *per contra*, submits that Petitioner is erroneously seeking Grade Pay of Rs.7,600/- w.e.f. 05.02.2013 when he was assigned the current duty charge of the post of B&FO *albeit* he was holding the substantive post of Deputy C.A. It is an undisputed position that Grade Pay of Rs.7,600/- is the Grade Pay of the higher post of B&FO and cannot be granted to a Deputy C.A. Petitioner was promoted as Deputy C.A. w.e.f. 01.07.2010. In terms of the extant Rules, for being considered for appointment to the post of B&FO, an officer is required to have five years continuous service in the post of Deputy C.A. Petitioner retired on 31.07.2014 and his case never came up for consideration for the post of B&FO as he had not completed requisite five years service and therefore, he cannot lay a claim to the Grade Pay of Rs.7,600/-.

9. Counsel further submits that as far as the current duty charge is concerned, it is true that Petitioner was assigned the said charge vide office order dated 05.02.2013 but it was clearly mentioned in the order itself that



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no benefit will be given on account of the said assignment. This order was never challenged by the Petitioner and even today, there is no challenge to this order. Comparison with Sh. H.S. Nanra is completely unfounded as the said officer was posted to DUSIB by the Government of NCT of Delhi on deputation, treating him on foreign service under FR-110(a) and after his posting as B&FO on current duty charge, his terms and conditions were fixed by the Finance Department of Government of NCT of Delhi, in which DUSIB had no role to play. However, as soon as the pay anomaly came to the notice of the Competent Authority in DUSIB, Sh. H.S. Nanra was repatriated.

10. Heard learned counsels for the parties and examined their contentions.

11. Broadly understood, the case of the Petitioner is that he was promoted to the post of Deputy C.A. w.e.f. 01.07.2010 and was given the current duty charge against the post of B&FO vide order dated 05.02.2013 and since the post of B&FO carries a Grade Pay of Rs.7,600/-, Petitioner is also entitled for fixation of his pay in PB-3 in the Grade Pay of Rs.7,600/- w.e.f. 05.02.2013, with consequential arrears and revision in retiral dues. There is no dispute that appointment to the post of B&FO is regulated by Recruitment Rules which provide that to be eligible for appointment, a Deputy C.A. must have five years continuous service in the said post. Admittedly, Petitioner was appointed as Deputy C.A. w.e.f. 01.07.2010 and retired on 31.07.2014. Therefore, Petitioner had not completed the five years eligibility period as Deputy C.A. till his retirement and his case never came up for consideration for appointment to the post of B&FO. What the Petitioner did not get by way of appointment on the post of B&FO due to ineligibility, he now seeks indirectly by claiming Grade Pay of Rs.7,600/- on



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account of his holding a current duty charge on the said post for a brief period, which is impermissible in law. Eligibility criteria cannot be waived for an individual and even today, the criteria for appointment to the post of B&FO is not disputed. Insofar as comparison with Sh. H.S. Nanra is concerned, in my view, this argument is wholly misplaced for the simple reason that Sh. H.S. Nanra was an officer working in the GNCTD and was sent on deputation to DUSIB. When he was given the current duty charge against the vacant post of B&FO, his pay and allowances were fixed directly by the Finance Department of GNCTD, as explained by Mr. Chauhan and DUSIB had no role in granting the Grade Pay of Rs.7,600/- to Sh. H.S. Nanra. As noted above, Mr. Chauhan also states, on instructions, that when the anomaly was discovered, Sh. H.S. Nanra was repatriated back to his parent department. Therefore, there is no merit in both the contentions raised on behalf of the Petitioner.

12. Writ petition is accordingly dismissed with no orders as to cost.

13. At this stage, Mr. Apurb Lal, learned counsel for the Petitioner submits that at the time of retirement, Petitioner was working against the post of B&FO, *albeit*, on current duty charge and therefore, whatever benefits were given to him including monetary benefits should not be recovered. In my view, to this extent, the interest of the Petitioner deserves to be protected and it is, therefore, directed that no recoveries will be made from the Petitioner from the benefits granted to him for holding the current duty charge as B&FO, on which position he retired on superannuation.

JYOTI SINGH, J

AUGUST 16, 2024/B.S. Rohella/shivam