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

+ W.P.(C) 8411/2018 & CM APPL. 75174/2024

K L SOBTI

.....Petitioner

Through: Mr. K.P. Sundar Rao & Mr. Udesb
Puri, Advocates.

versus

DIRECTORATE OF EDUCATION & ORS

.....Respondents

Through: Mr. Yeeshu Jain, ASC with Ms.
Jyoti Tyagi, Ms. Priya Shukla &
Ms. Tanaya, Advocates for R-1.
Mr. Mohd. Juned, Legal Assistant,
DoE.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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01.05.2025

1. The petitioner has filed this writ petition under Article 226 of the Constitution, seeking fixation of his pension as per the Grade Pay of Rs. 5,400/-, and consequent fixation, in accordance with the recommendation of the 7th Central Pay Commission ["CPC"].
2. The petitioner joined the service of Directorate of Education ["DOE"], GNCTD, as Lower Division Clerk in the year 1956. He was promoted to the post of Upper Division Clerk in the year 1966, and to the post of Head Clerk/Assistant in the year 1977. The petitioner retired on 30.06.1993, and his pension was admittedly computed on the basis of the emoluments of a Head Clerk. It is undisputed that he continues to receive commensurate pension on that basis, even today.



3. However, the contention of the petitioner is that his pensionary benefits are required to be enhanced, as his services were utilised as a Legal Assistant since the year 1979, and he was thereafter posted as Assistant Legal Advisor [“ALA”], ACT Branch, until his retirement.

4. I have heard Mr. K.P. Sundar Rao, learned counsel for the petitioner, and Ms. Jyoti Tyagi, learned counsel for DOE.

5. It may first be noted that, even in the writ petition, the petitioner has not clearly stated when he was appointed as an ALA. In fact, even the designation is wrongly mentioned as “Assistant Legal Officer” in paragraph 2(h) of the writ petition, which reads as follows:-

“h. That by keeping in view the sincere efforts and exemplary services rendered by the Petitioner, he was posted as Assistant Legal Officer (ACT Branch) by upgrading the post of Legal Assistant (ACT Branch), where he continued his duties till 1993.”

6. By order dated 08.04.2025, Mr. Rao was directed to produce the document by which the petitioner was appointed to the post of ALA. It is now admitted that there is no such document. The petitioner has filed an additional affidavit on 15.04.2025, in which it is stated as follows:-

“16. I was not given a formal appointment letter for the post of Assistant Legal Adviser because it was a temporary post at the time.”

7. The only document submitted in support of the petitioner’s case, that he retired on the post of ALA, is a copy of a Pension Payment Order dated 21.06.1993. In the said document, words “ALA” have been mentioned as the “Post/Grade/Last Rank held”. No other document is sought to be cited by Mr. Rao.

8. In the counter affidavit filed by the respondent, it has been clearly stated that the petitioner was never appointed to the post of ALA. In fact,



and one regular post of ALA in DOE was created only in the year 2001, long after the petitioner had superannuated. In the counter affidavit, it is mentioned that a temporary post of ALA was approved by the Hon'ble Lieutenant Governor in the year 1987. However, there were no recruitment rules for such a post, and it is categorically stated that the petitioner was never appointed to the said post at all.

9. Despite an opportunity granted to the petitioner by order dated 21.02.2024, no rejoinder has been filed to the counter affidavit.

10. In these circumstances, there does not appear to be any credible basis for the contention that the petitioner was appointed to the post of ALA, or retired from the said post at a pay scale higher than that mentioned in the Pension Payment Order. As noted above, pension has been paid to the petitioner throughout, commensurate with the pay scale mentioned in the Pension Payment Order. In the absence of any order appointing or promoting him to the post, mere mention of ALA as his designation in the Payment Pension Order, cannot be determinative of the petitioner's rights. Even in the Pension Payment Order, his pension was fixed on the basis of the emoluments he was actually drawing.

11. The petitioner has also not sought refixation of his pension on this basis, for at least the first 20 years after he retired. The first representation on record, was submitted by the petitioner on 29.09.2012. The petitioner sought revision in his pension in accordance with the recommendations of the 6th CPC, but did not suggest that it had been wrongly fixed in the first place, or that his last post/rank was not taken into account. No such refixation was sought even in the next representation dated 01.05.2013. The petitioner relies upon a communication to DOE dated 26.02.2014, by



which he was requested to furnish a photocopy of the Pension Payment Order for the purposes of revision of pension in accordance with 6th CPC, as his service record was not traceable in office. His pension has admittedly been revised, in accordance with the recommendation of the 6th CPC and 7th CPC, commensurate with the pay scale at which he was stated to have retired.

12. This is not a case where pension has been denied contrary to the rules, but where according to the petitioner, his pension was wrongly fixed at the very first instance. He seeks re-fixation on the basis of a contention that was available to him throughout. However, this question was not agitated contemporaneously or at a proximate period in time. The present writ petition was filed only in the year 2018, apparently drawing sustenance from the fact that the petitioner's service records were not available with the department.

13. Even on merits, as noted above, the petitioner has failed to make out a case that he was ever appointed or promoted to the post of ALA.

14. For the aforesaid reasons, the petition is dismissed, but with no order as to costs. All pending applications also stand disposed of.

PRATEEK JALAN, J

MAY 1, 2025

'pv/AD'/'