

(2011) 09 DEL CK 0286

Delhi High Court

Case No: Writ Petition (C) No. 5951 of 2003

Shri M.L. Meena

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision: Sept. 30, 2011

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- Constitution of India, 1950 - Article 226

Hon'ble Judges: M.L. Mehta, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Shankar Raju, for the Appellant; Sachin Datta and Mr. Abhimanyu, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sikri, J.

The pleadings in this writ petition unfold the following material facts:

The Petitioner was appointed as Deputy Assistant Director General (MS) in Pay Scale of Rs. 1100 - 1600 on the recommendation of the Union Public Service Commission and he assumed the office to the said post on 7th January, 1978. Next promotion was to the post of Deputy Assistant Director General (MS) (in Senior Scale) for which eligibility is completion of three years in the feeder cadre. This senior grade was given to the Petitioner in the year 1984.

2. In a celebrated judgment rendered by the Apex Court in Dr. Ms. O.Z. Hussain Vs. Union of India and others, exhorting the Government as model employer to provide adequate promotional avenues to the employees, the Respondent No. 1/Union of India framed the rules known as "The Department of Health (Group- A Gazetted Non- Medical Scientists and Technical Officers) In- situ Promotional Rules, 1990". These Rules provide for suitable promotion avenues to Group- A Scientists in the non- medical wing of the establishment of Directorate of Health Services

(hereinafter referred to as "the Rules"). Rule 4 of the said Rules provides for "Categorization of Scientists Levels". Sub- rule (1) of Rule 4 reads as under:

(1) Without prejudice to recruitment Rules relating to the posts specified in Annexure- II of Group "A" Scientific and Technical Officers who were working in the department on regular basis and were holding on the date of commencement of these Rules, the posts specified in column (i) of Annexure - II, shall be deemed to have been appointed to the corresponding posts specified in column 4 with Scientists Levels specified in column 4 respectively of Annexure - II for the purpose of application of these Rules governing in- situ promotions, provided they possess the minimum qualifications prescribed in Annexure- I; provided that the Central Government may in consultation with the commission and for reasons to be recorded in writing, categorize the Scientists Level of any of the posts referred to in Annexure- II or in Annexure- III..

3. In Annexure - II, redesignation of the category to which the Petitioner belonged was done as under:

Existing Designation	No. of level	Designation after categorization of Scientists Post	(S-)	Scientist-
Medical Stores Organization:				
Dy. Director General	1	Dy. Genera	Director (S- 4)	Scientist- 4
Asst. Director General	2	Asstt. General	Director (S- 3)	Scientist- 3
Dy. Asst. Director General Manager	7	Dy. Asst. General Manager	Director (S- 2)	Scientist- 2
Manager	7	Manager	(S- 1)	Scientist- 1

4. Thus, the Dy. Assistant Director General after categorization became as (S- 2) Scientist- 2. This Rule further provides that the incumbent in the existing designation would be deemed to have been appointed to the corresponding post. Thus, the Petitioner became Scientist- 2 on the promulgation of the aforesaid Rules.

5. Next promotion in the hierarchy is to the post of Scientist- III. Rule 8 deals with "The Schedule of Promotion". In certain cases, "Power to Relax" this Rule is given under Rule 10 and for clarification of doubts on certain aspects, Rule 11 is provided. These Rules are reproduced below:

8. THE SCHEDULE of PROMOTION- (1) A scientific or technical officer holding Group "A" post shall be eligible for promotion upto and including the grade of Scientists 4 level carrying pay scale of Rs. 4500- 5700 as follows:

(a) Scientist 1 Level officers working in the grade of Rs. 2200- 4000 shall be promoted to the S2 Level in the grade of Rs. 3000- 4500 (Non- teaching)/Rs. 3000- 5000 (Teaching) on completion of five years of regular service in the grade of Rs. 2200- 4000 on the basis of an assessment.

(b) Scientist 2 Level officers working in the grade of Rs. 3000- 4500/3000- 5000 shall be promoted to the S- 3 Level in the scale of Rs. 3700- 5000 on completion of five years of regular service in the grade of 3000- 4500/3000- 5000 on the basis of an assessment.

(c) Scientists 3 Level Scientists/officers working in the grade of Rs. 3700- 5000 shall be promoted to the Scientist 4 Level in the scale of Rs. 4500- 5700 on completion of five years of regular service in the grade of 3700- 5000 on the basis of an assessment.

(2) Promotion to the 8 floating posts in the Scientist Level 5 in the scale of Rs. 5900- 6700 shall be made from a common eligibility list of all non- Medical Scientist having at least 3 years of regular service in the scale of Rs. 4500- 5900, the eligibility list being drawn on the basis of the length of their regular service in the scale of Rs. 4500- 5900/-.

9. Upgradation on Promotion - Where an officer is promoted under these rules, the grade of the post immediately held by him shall stand upgraded to the next higher level to which he has been promoted and shall revert to the original level on the vacating of it by the officer holding it: provided that where an officer is promoted further to higher levels in the course of time, the grade of the post shall continue to be upgraded to the level to which he has been promoted as personal to him and shall revert back to the level of original recruitment to the post i.e., level 1, 2, 3 or 4 as shown in the column 4 of Annexure - II.

10. POWER TO RELAX - Where the Central Govt. is of the opinion that it is necessary or expedient to do so, it may by order for reasons to be recorded in writing and in consultation with the UPSC relax any of the provisions of the rules with respect to

any class or category of persons.

11. REMOVAL of DOUBTS - For removal of doubts it is hereby declared that these rules are in addition to and not in derogation of the existing recruitment rules including the method of promotion or direct recruitment to the posts mentioned in Annexure II.

6. The Petitioner was given Senior Grade of Rs. 1300- 1700 with effect from 15th March, 1984. After enforcement of recommendation of IVth Central Pay Commission with effect from 01.01.1986, this scale was revised to Rs. 3000 - Rs. 5000. The Petitioner started getting the scale of Rs. 3000 - Rs. 5000. Rule 8(1)(b) provides that Scientist 2 Level officers working in the grade of Rs. 3000- Rs. 4500/ Rs. 3000- Rs. 5000 shall be promoted to the S- 3 Level in the scale of Rs. 3700- Rs. 5000 on completion of five years of regular service in the grade of Rs. 3000- Rs. 4500/ Rs. 3000- Rs. 5000 on the basis of an assessment. Rule 9 stipulates that on promotion under these rules, the grade of the post immediately held by him shall stand upgraded to the next higher level to which he has been promoted.

7. The Petitioner was considered for promotion to S- 3 level along with others and was promoted vide orders dated 24th October, 1992. As per this order, on promotion from S- 2 to S- 3 with effect from 15th November, 1989, he was upgraded to the Scale of Rs. 3700 - Rs. 5000 from Rs. 3000 - Rs. 5000. The Petitioner was not happy with this upgradation, as according to him, before his promotion to level S- 3, he was enjoying in pay scale of Rs. 3000- Rs. 5000 and the pay scale of Rs. 3700 to Rs. 5000/- given to him ended with Rs. 5000/-. It was, therefore, no upgradation in real sense. Further, the Petitioner was always drawing pay of Rs. 4,125/- which was much higher than the minimum pay- scale granted to him, i.e., Rs. 3700/- in level S- 3 on his promotion. The Petitioner made representation dated 17th February, 2003 for removal of this purported anomaly, but nothing happened. He kept on making further representations and sent various reminders as well, but to no effect.

8. Ultimately in August, 2001, he approached the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") by filing application u/s 19 of the Administrative Tribunal Act. This was disposed of vide orders dated 27th August, 2001 directing the Government to consider his representations. In compliance with the said order, the Petitioner made another detailed representation, which was rejected by the Respondents vide orders dated 4th January, 2002. Challenging this order, the Petitioner moved the Tribunal once again. This time, the claim of the applicant was contested by the Respondents by filing the detailed reply to which the Petitioner filed his rejoinder. After considering arguments advanced by the counsel for both the parties, the Tribunal had dismissed the O.A. of the Petitioner as devoid of any merit vide impugned order dated 26th February, 2003. The Petitioner sought review of the Tribunal's order dated 26th February, 2003, which met the same fate, as the said review was also dismissed vide orders dated 26th April, 2003.

9. Challenging the aforesaid orders passed in the O.A. as well as in the Review Petitioner, the present petition is preferred under Article 226 of the Constitution of India.

10. Learned Counsel for the Petitioner argued that there was an apparent anomaly by putting the Petitioner, on promotion to S- 3, in the pay scale of Rs. 3700- Rs. 5000 when the Petitioner was already enjoying the pay scale of Rs. 3000- Rs. 5000. His submission, therefore, was that it was a fit case where Rule 11 of the Rules should have been invoked and anomaly revoked. According to the Learned Counsel, this aspect was not dealt with properly by the Tribunal resulting into error.

11. We are not impressed by the aforesaid argument of the Learned Counsel.

12. It is to be borne in mind that the aforesaid Rules were framed on the basis of directions made by the Supreme Court in the case of Dr. (Ms) O.Z. Hussain (supra). In- Situ Promotion Rules, 1990, the scale of pay of Rs. 3000- 4500 and Rs. 3000- 5000 have been combined and are made the feeder cadre for promotion to S- 3 level. Though these Rules were promulgated in the year 1990, the Rules are given retrospective effect from 15.11.1989. This was the date specifically chosen because of the reason that on this date, directions were given by the Supreme Court. Further, it is relevant to point out that the Petitioner nowhere challenged the vires or validity of Rule 8 or any other Rules. The placement in the scale of Rs. 3,700 - 5000/- was strictly in accordance with this Rule. The argument which has been advanced before us was not raised before the Tribunal. The contention of the Petitioner was that his case is covered under Rule 8(1)(c) of In- Situ Rules, which was not accepted by the Tribunal. Interestingly, challenge on this ground is given up, as it was not argued before us at all and the argument was predicated on Rule 8(1)(b) only. Likewise, there was no such case projected by the Petitioner that his upgradation on promotion has resulted in any anomaly. The question of anomaly even otherwise does not arise when the upgradation is made strictly as per the extent Rule.

13. It will also be worthwhile to point out that pursuant to Vth Central Pay Commission Rs. 3,700- 5000/- was revised to Rs. 12,000- 16,500/- which is distinct from the clubbed scale of Rs. 3000- 4500/ Rs. 3000- 5000/-. It is evident that the decision to club the scales was a conscious decision and was not an anomaly as suggested by the Petitioner. The order dated 1st April, 1991 issued in pursuance to various orders passed by the Supreme Court in W.P.(C) No. 101/1989 and Contempt Petition No. 85/1990 clearly mentions as under:

6(b) These are some who joined service prior to 15.11.1979 after 15.11.1969, having thus completed one unit of 10 years service period. If they have remained in the same Grade without any promotion/upward mobility in pay scale during the period 15.11.79 to 14.11.89 they are considered eligible for in situ promotion to the next higher level as on 15.11.89, irrespective of the fact whether they had or had not

received promotion prior to 15.11.79.

14. It becomes manifest from the reading of the above that the occasion to promote the Petitioner arose only on the basis that there has not been any promotion/upward mobility in pay- scale during the period 15.11.1979 and 14.11.89. If it was true, as the Petitioner contends that DADG (MS) at to Rs. 3000- 5000/- level was distinct from the DADG having a scale of Rs. 3000- 4500/- , then the Petitioner having already got a promotion on 15th March, 1984 would not have been eligible for promotion in terms of Para 6(b) of the order dated 1st April, 1991 read with In-Situ Rules. This itself negates the contention of the Petitioner.

15. We, thus, do not find any merit in the writ petition, which is accordingly dismissed. However, there shall not be any order as to costs.