

(2010) 09 DEL CK 0288

Delhi High Court

Case No: Writ Petition (C) 12375 of 2009

Beena Chattree

APPELLANT

Vs

DDA and Others

RESPONDENT

Date of Decision: Sept. 20, 2010

Hon'ble Judges: Pradeep Nandrajog, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: Anil Singal, for the Appellant; Arun Birbal, for the Respondent

Judgement

Pradeep Nandrajog, J.

As would be evident from the facts noted by us hereinafter, without understanding the procedure of the law to be complied with, knee jerk reactions by officers of DDA have resulted in unnecessary litigation and none informed Ms. Beena Chattree the correct legal position and thus the lady has been running a constant feud with her employer i.e. DDA.

2. Late Sh. B.S. Chattree, husband of Ms. Beena Chattree was employed as an Executive Engineer under Delhi Development Authority (DDA) and suffered an untimely death in the prime of his youth. Under a policy framed by DDA as per which an adult member of the family of the deceased employee can be given appointment on compassionate basis if the family comes under sudden economic distress, Ms. Beena Chattree sought appointment on compassionate basis to a post for which she was qualified to be appointed. Fortunately for her, Ms. Beena Chattree had obtained a Masters Degree in Psychology.

3. The first and the foremost wrong committed by the officers of DDA was in not identifying a post in the cadre to which Ms. Beena Chattree could be appointed and following the simpler route of creating an ex-cadre post for her. Overlooking the fact that the educational qualifications acquired by Ms. Beena Chattree rendered her not only suitable but even eligible to be appointed in the Social Welfare Department in the cadre of Welfare Officers and appoint her to a post in the cadre and designate her appointment with reference to the post, DDA issued the letter of

appointment notifying to Ms. Beena Chattree that she was appointed as a "Field Investigator" with effect from 4.4.1989 in the pay-scale Rs. 1400-40-1800-EB-50-2300. It may be noted that commensurate to her educational qualifications, Ms. Beena Chattree was most unsuitable to work in the field as a Field Investigator and for the said reason while issuing the order dated 17.4.1989 posting Ms. Beena Chattree, the department wrote as under:

Subject to the condition mentioned in her appointment letter, Smt. Beena Chattree W/o Late Sh. B.S. Chattree has been appointed as Field Investigator in Ex-Cadre Post in Delhi Development Authority w.e.f. 4.4.1989 (A.N.) in the pay-scale of Rs. 1400-40-1800-EB-50-2300 plus other allowance sanctioned from time to time.

Smt. Beena Chattree is hereby posted with the Chief Welfare Officer as Asstt. Welfare Officer.

The pay and allowance of the official are hereby released w.e.f. 4.4.1989 and up to May 1989, thereafter, she will not be entitled to draw her pay and allowances till she gets her service book prepared from Personnel Branch-II.

4. Suffice would it be to note that appointed as a Field Investigator to an Ex-Cadre Post in the pay-scale Rs. 1400-2300, Ms. Beena Chattree was designated as an Asstt. Welfare Officer and posted with the Chief Welfare Officer. Obviously, DDA was heading for a two-fold problem as would unfold from the facts noted in the next two paragraphs.

5. One Giri Raj Kishore, working as a Field Investigator filed WP(C) No. 2512/1989 in this Court questioning the appointment of Ms. Beena Chattree as a Field Investigator pleading that the notified recruitment rule to the post of Field Investigator did not entitle Ms. Beena Chattree to be appointed as a Field Investigator, even as the holder of an ex-cadre post, inasmuch as a post graduate degree in Psychology was not the degree recognized to be appointed as a Field Investigator as per the notified recruitment rules. The problem was overcome by DDA by taking a stand in the writ petition that it had created a post of a Field Investigator in the Welfare Department and the post was being treated as an Ex-Cadre Post in the Welfare Department and that Giri Raj Kishore should have no worry because Ms. Beena Chattree would not be treated on the strength of the Planning and Architectural Department of DDA in which the Cadre Posts were of Assistant Field Investigator, Field Investigator and Research Officer. In view of the stand taken by DDA, vide order dated 7.5.1990 WP(C) No. 2512/1989 was dismissed holding that the appointment of Ms. Beena Chattree belonging to an ex-cadre post in the Welfare Department and not to a post under the Planning and Architectural Department, Giri Raj Kishore could have no possible grievance or a threat to his seniority. It may be noted as a matter of fact that the post of Field Investigator was in the pay-scale of Rs. 1400-2300.

6. Consistent with its stand taken in WP(C) No. 2512/1989, DDA clarified on the issue by designating Ms. Beena Chattree as Assistant Welfare Officer. One Sh. B.L. Kaul holding substantive post of a Social Welfare Superintendent and placed in a pay-scale (not disclosed in the pleadings) but admittedly more than the pay-scale Rs. 1400-2300 raised an immediate issue informing his superior officers that it was an anomalous situation of his reporting to Ms. Beena Chattree. He pointed out that in the hierarchy of posts, the Department was treating Assistant Welfare Officer as the Reporting Officer by him and it was strange that a person placed in the higher pay-scale was made subordinate in hierarchy to a person in the lower pay-scale. Finding merit in the representation of Sh. B.L. Kaul, the Director (IR&SW) DDA put up a note dated 30.4.1991 recommending that to remove the anomaly highlighted by Sh. B.L. Kaul, Ms. Beena Chattree, be designated as a Field Investigator. On the same day, the Director (Personnel) put up a note concurring with the note of the Director (IR&SW) additionally pointing out that Ms. Beena Chattree be made to work as a Field Investigator as her continuation in the Welfare Department may cause administrative problems in future, especially when she would claim promotion in the welfare ring. For the reason Ms. Beena Chattree could not be placed in the Planning and Architectural Department where the cadre of Field Investigators and Research Officers was in place as the same would run in the teeth of the stand taken by the Department in WP(C) 2512/1989, the Vice Chairman, DDA resolved the problem by directing vide note dated 25.5.1991 that the post held by Ms. Beena Chattree be re-designated as a Staff Welfare Assistant. Pursuant thereto Ms. Beena Chattree was informed that the post held by her would be that of a Staff Welfare Assistant in the pay-scale Rs. 1400-2300.

7. Everybody thought that the problem had been solved. But the solution had a ghost within. The post of Assistants in the Secretarial Cadre of DDA was in the scale Rs. 1400-2300 at the relevant time but there was a pending claim of the Assistants in the Secretarial Cadre that their pay-scale should be Rs. 1640-2900 and in respect whereof they had filed a writ petition in which directions were issued that Assistants in the Secretariat of DDA be placed in the scale Rs. 1640-2900 with effect from 1.1.1989. It may be noted that the pay-scale Rs. 1640-2900 was the next above pay-scale above the pay-scale Rs. 1400-2300.

8. Having joined service with effect from 4.4.1989 and being on an ex-cadre post and earning no promotion and as per the ACP Scheme in force under DDA as per which an employee who earned no promotion was entitled to be placed in the next higher scale, with effect from 4.4.2001 DDA placed Ms. Beena Chattree in the next above pay-scale Rs. 1640-2900 which scale as of said date was replaced by the pay-scale Rs. 5500-9000. As per DDA Ms. Beena Chattree was granted one financial upgradation benefit.

9. The ghost which we had referred to in para 7 above was brought to the forefront by Ms. Beena Chattree who started claiming that as an Assistant Welfare Officer she

was to be treated as an Assistant and that since Assistants in the Secretariat were directed by this Court to be placed in the scale Rs. 1640-2900, which scale was replaced by the scale Rs. 5500-9000, what she got was not a financial upgradation but the replacement pay-scale.

10. She filed WP(C) No. 15518/2004 claiming that her entitlement for promotion in the cadre of Welfare Inspectors was illegally being overlooked inasmuch as she had completed 5 years regular service and had to be treated at par with a Welfare Inspector and should be promoted as a Senior Inspector. She stated that she had been merged in the cadre of Welfare Inspectors evidenced by the fact that in the tentative seniority list for the post of Welfare Inspector her name was shown at serial No. 7. She stated that the six persons placed above her were illegally shown senior to her. However, it may be noted that she did not implead the persons likely to be affected by her claim as respondents in the writ petition.

11. Unfortunately, DDA could not convince the learned Single Judge of this Court, for the reason, facts as noted hereinabove by us were not projected in the correct perspective by DDA, vide judgment and order dated 1.5.2006 the learned Single Judge treated Ms. Beena Chattree's placement in the scale Rs. 5500-9000 as a case of scale replacement when pay-scales were revised and not as a case of financial upgradation. The learned Single Judge held that the pay-scale Rs. 1400-2300 to which Ms. Beena Chattree was appointed was revised to Rs. 1640-2900 and that the scale Rs. 5500-9000 was the replacement scale to the scale Rs. 1640-2900. The learned Single Judge directed DDA to consider the matter in light of what was opined upon by the learned Single Judge and pass an order pertaining to fixing the seniority of Ms. Beena Chattree to a cadre post and further promotion or benefit of pay-fixation. It is apparent that the learned Single Judge overlooked the fact that as of 1.1.1989 of the many pay-scales in place, there were two pay-scales in DDA i.e. Rs. 1400-2300 and the next above Rs. 1640-2900 and that Assistants in the Secretariat were urging that they ought not to be placed in the scale Rs. 1400-2300 and should be placed in the scale Rs. 1640-2900, which claim succeeded. The learned Single Judge overlooked the fact that Ms. Beena Chattree was appointed on an ex-cadre post of Assistant Welfare Officer to which the scale applicable was Rs. 1400-2300 and she could not claim the benefit of what was granted to the Assistants in the Secretariat.

12. The problem for DDA got compounded when afore-noted facts overlooked by the learned Single Judge were held to be a question of fact by the Division Bench of this Court resulting in LPA No. 2113/2006 being dismissed vide order dated 17.11.2006. DDA did not raise further issue and did not trouble the Supreme Court and as a result implementing the decision of the learned Single Judge which required DDA to pass a fresh order, proceeded to reconsider the matter and pass an order dated 30.11.2006. The order reads as under:

With reference to orders dated 1.5.2006 passed by the Hon"ble High Court of Delhi in WP(C) No. 15518/2004, you are hereby informed as under:

i. You were initially appointed to the post of Field Investigator in the pay scale of Rs. 1400-2300 vide appointment letter No. F.4.(1)89/OB-II dated 4.4.1989. You had accepted the offer of appointment and joined DDA as Field Investigator in the pay scale of Rs. 1400-2300 vide your joining report/letter dated 4.4.1989. However, taking a lenient view, you were posted with Chief Welfare Officer vide EO No. 1463 dated 19.4.1989. Further, on your representation for seeking promotional avenues, your case was considered by the Committee and you were appointed/promoted to the higher post of Welfare Inspector in the pay scale of Rs. 5500-9000 vide E.O. No. 1480 dated 16.9.2002. It is also relevant to mention here that had you been in FI cadre, you would have been in the pay scale of Rs. 4500-7000 as your senior in the FI cadre are still in the pay scale of Rs. 4500-7000.

ii. Regarding fixation of seniority, it is stated that you have been rightly assigned seniority in Welfare Inspector Cadre and your name appears at S. No. 7 of the seniority list.

iii. Regarding considering your case for benefit of pay fixation as was granted to similarly situated employees, it is stated that you were appointed as Field Investigator in the pay scale of Rs. 1400-2300. This scale was further revised to Rs. 4500-7000 under 5th Pay Commission and the Field Investigator are still in the same pay scale. The pay scale of Rs. 1640-2900 was granted w.e.f. 1.1.1986 in the cadres of Senior Stenographer and Assistants only on implementation of Court cases and this scale was further revised to Rs. 5500-9000. Since the pay scale of Rs. 1640-2900 was not granted in the cadre of Field Investigator w.e.f. 1.1.1986 and they are in the scale of Rs. 4500-7000. As such, under these circumstances, the pay scale of Rs. 5500-9000 w.e.f. 4.5.1989 cannot be given to you.

13. To put it in a nutshell, DDA reiterated that it had accorded one financial upgradation benefit to Ms. Beena Chattree and the pay-scale Rs. 1640-2900 was not the replacement scale to the scale Rs. 1400-2300. It was highlighted that the replacement scale of Rs. 1400-2300 was Rs. 4500-7000 and that the replacement scale of Rs. 1640-2900 was Rs. 5500-9000 and that by giving her the scale Rs. 5500-9000 with effect from 4.4.2001 DDA had implemented the ACP scheme by granting one financial upgradation to Ms. Beena Chattree.

14. Beena Chattree resorted to two actions when order dated 30.11.2006 was passed. She filed a contempt petition registered as Cont. Cas. (C) No. 7/2007 as also she filed WP(C) No. 227/2007. In the contempt petition she pleaded violation of the mandamus issued by the learned Single Judge in WP(C) No. 15518/2004 as upheld in LPA No. 2113/2006. Prayer made in WP(C) No. 227/2007 was to treat her as a Welfare Inspector with effect from 4.4.1989 and grant her further promotion to the post of Senior Welfare Inspector in the Grade of Rs. 6500-10500. Needless to state,

she claimed promotion on account of the fact that the post of Senior Welfare Inspector, as per the notified recruitment rule, made eligible Welfare Inspectors having five years qualifying service. Since her claim would have adversely impacted 6 persons working in the Welfare Inspector Cadre who were working as Welfare Inspectors as also Senior Inspectors were impleaded as respondents.

15. With a notification issued requiring service disputes of employees of DDA to be decided by the Central Administrative Tribunal, WP(C) No. 227/2006 was transferred to the Tribunal where it was registered as TA No. 132/2007 and met with a failure when it was dismissed vide judgment and order dated 9.7.2009.

16. Before discussing the reasons given by the Tribunal to dismiss TA No. 132/2007, it would be useful to note that after DDA gave the first ACP benefit to Ms. Beena Chattree with effect from 4.4.2001, a committee was constituted to consider promotional avenues for Ms. Beena Chattree. Taking note of the fact that the post to which she was appointed i.e. the post of Assistant Welfare Officer was a welfare post, the committee considered two alternatives. The committee firstly considered whether the post could be merged with the secretarial staff and found the same not to be feasible because of the reason, officers who had joined much prior to her had yet to be promoted. The committee alternatively considered whether she could be placed in the Welfare Inspector's cadre and noting that there were less number of people in the cadre and not many may be affected by encadring her as Welfare Inspector, took a decision that Ms. Beena Chattree may be integrated in the Welfare Inspector's cadre and then considered for promotion to the post in the scale of Rs. 5500-9000. On 16.9.2002 the decision was implemented and treating the post held by her as a cadre post making her eligible to be promoted as a Welfare Inspector, Ms. Beena Chattree was promoted as a Welfare Inspector and placed in the pay-scale Rs. 5500-9000.

17. The Tribunal has negated the claim of Ms. Beena Chattree on the reasoning that the mandamus issued by the learned Single Judge of this Court in WP(C) No. 15518/2004 was only to consider the claim of Ms. Beena Chattree and no more. While considering the merits of the impugned order dated 30.11.2006, the Tribunal held against Ms. Beena Chattree. In a nutshell, the Tribunal held that her initial appointment was in the pay-scale Rs. 1400-2300 and after initial hiccups as to what post did she hold, she was designated as an Assistant Welfare Officer. The post of Assistant in the Secretariat of DDA was a distinct post in a separate cadre and Assistants in the Secretariat, though placed in the scale Rs. 1400-2300 obtained placement in the scale Rs. 1640-2900 pursuant to a Court decision and that Ms. Beena Chattree who was an Assistant Welfare Officer could not claim parity with Assistants in the Secretariat and thus her claim that on 4.4.2001 when she was placed in the scale Rs. 5500-9000 which was the replacement scale of the earlier scale Rs. 1640-2900, she got a financial upgradation and not a replacement scale as claimed by her. Second reason given by the Tribunal is in harmony with the

reasoning of the committee constituted in the year 2002, reasoning whereof have been noted by us in para 16 above.

18. It would be apparent to a reader of the present decision that contentions urged by Ms. Beena Chattree in WP(C) No. 12375/2009 where under she challenges the order dated 9.7.2009 passed by the Central Administrative Tribunal dismissing TA No. 132/2007 are that notwithstanding a learned Single Judge of this Court directing her claim to be reconsidered when WP(C) No. 15518/2004 filed by her was allowed, the reasons given by the learned Single Judge were binding on DDA and that since it was held that the scale Rs. 5500-9000 which was given to her with effect from 4.4.2001 was a replacement scale and not by way of upgradation, the Central Administrative Tribunal could not have returned a contra finding, much less the department. Needless to state, in the contempt petition it is urged by her that by giving reasons in contravention of the reasoning of the learned Single Judge, DDA is in contempt.

19. We need not reflect much upon the issue for the reasons the facts noted by us herein above clearly bringing out that Ms. Beena Chattree was appointed as an Assistant Welfare Officer on 4.4.1989 and was placed in the scale Rs. 1400-2300. She received salary in the said scale and never in the scale Rs. 1640-2900. Assistants in the Secretariat of DDA who were placed in the scale Rs. 1400-2300 obtained a verdict in their favour that they were wrongly placed in the said scale and that they should be placed in the scale Rs. 1640-2900 with effect from 1.1.1989 and DDA had to comply with the Court order. Replacement scale of Rs. 1400-2300 post 1.1.1996 was Rs. 4500-7000 in which scale Ms. Beena Chattree started receiving salary after 1.1.1996 and the Assistants in the Secretariat started receiving salary in the scale Rs. 5500-9000 which became the replacement scale to the scale Rs. 1640-2900. For the obvious reason that the Assistant Welfare Officer was never equated with Assistants in the Secretariat, Ms. Beena Chattree never claimed salary in the scale Rs. 1640-2900 or the replacement scale Rs. 5500-9000 which came into force on 1.1.1996. Very cleverly she started raising the issue after ACP benefit was granted to her. Unfortunately for DDA, due to faulty pleadings, DDA could not project its case as it could successfully do before the Central Administrative Tribunal and before us, when WP(C) No. 15518/2004 was argued and the learned Single Judge treated the scale Rs. 1640-2900 as the entitlement of Ms. Beena Chattree when she joined service and thereby held that her placement in the scale Rs. 5500-9000 was not by way of financial upgradation but by way of replacement issued the mandamus that her case may be considered. To compound the misery of DDA, LPA No. 2113/2006 challenging the judgment and order dated 1.5.2006 passed by the learned Single Judge suffered a dismissal on 17.11.2006. DDA found an albatross around its neck.

20. The position therefore would be that the decision of the learned Single Judge and the reasoning therein in favour of Ms. Beena Chattree has attained a finality, but on wrongly assumed facts. But, it cannot be lost sight of that when said decision

was pronounced parties likely to be affected i.e. Sh. S.K. Bansal, Sh. S.S. Mohan, Sh. Ranbir Singh, Sh. Karambir Singh, Smt. Chayya Chain and Sh. Kuldeep Mehra in the Welfare Section were not impleaded as parties. It is settled law that a decision rendered which impacts the claim of third parties, in the absence of their impleadment can always be questioned in the subsequent proceedings by the said parties. Conscious of the fact that the said persons never challenged the decision of the learned Single Judge, but noting further that occasion thereof did not arise inasmuch as DDA re-interpreted the factual situation in their favour requiring Ms. Beena Chattree to re-visit the Court and in the second round of litigation being conscious that her claim would adversely impact said persons, she impleaded them as respondents No. 2 to 7.

21. One thing is clear. Claim of Ms. Beena Chattree to be granted seniority in the Welfare Inspector Cadre with effect from 4.4.1989 cannot be accepted for the simple reason she will supersede many persons who joined the cadre much before her. DDA has not merged the ex-cadre post held by Ms. Beena Chattree in the Welfare Inspector Cadre and neither was this the mandamus of the learned Single Judge of this Court. DDA merged Beena Chattree's ex-cadre post in the cadre of the Welfare Department, but while so doing interpreted the factual scenario as discussed by us herein above, which interpretation unfortunately fouls the reasoning of the learned Single Judge in the decision dated 1.5.2006 in WP(C) No. 15518/2004, which reasoning of the learned Single Judge is contrary to the facts and was the result of the improper pleadings before him. Further but, right or wrong, the reasoning of the learned Single Judge has attained finality. The mandate must be honoured by us for the reason a coordinate Division Bench of this Court upheld the mandamus and the reasoning of the learned Single Judge, though incorrect, attained finality.

22. Learned Counsel for Beena Chattree as also learned Counsel for DDA did not dispute that till date the applicable recruitment rules in the cadre in which Beena Chattree is sought to be integrated have not been amended till date. Thus, notwithstanding DDA showing Beena Chattree at serial No. 7 in the tentative seniority list of Welfare Inspectors, learned Counsel could not justify said action in the absence of a proper integration of the ex-cadre post held by Beena Chattree in the Welfare Inspector's cadre. No doubt, on the administrative side DDA resolved to do so, but did not follow up its resolution, as required by law by amending the applicable recruitment rules. Needless to state after the recruitment rules are amended, integration has to be effected by ensuring equality of treatment to all. The undisputed position is that if claim of Ms. Beena Chattree is accepted, she would jump years ahead of her counter parts and may even become senior to people who are in the post above the post of Welfare Inspector. Cadre integration has to be effected on the principles of law laid down by the Supreme Court in the decision reported as [State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others,](#)

23. The position therefore would be that as of today Ms. Beena Chattree would have to be treated as still holding an ex-cadre post, notwithstanding decisions taken by DDA on the administrative side till a proper cadre integration is effected and the rule applicable to determine inter-se seniority specified keeping in view the principles of law laid down by the Supreme Court in Chanderkant Anant Kulkani's case, and till said is done, her placement in the scale Rs. 5500-9000 as on 4.4.2001 would have to be treated as a case of grant of a replacement scale and not as a result of implementation of the ACP scheme. This is the only way in which the hiatus between the reasoning of the learned Single Judge and the reasoning which flows out on a correct interpretation of the facts can be resolved. As a result Ms. Beena Chattree would be entitled to the first upgradation with effect from 4.4.2001 in the pay-scale Rs. 6500-10500 and for which we issue a mandamus to DDA that with effect from 4.4.2001 Ms. Beena Chattree be placed in the scale Rs. 6500-10500 but would be treated as the holder of an ex-cadre post. Claim of Ms. Beena Chattree for grant of seniority as prayed by her to the post of Senior Inspector above respondents No. 2 to 7 is rejected. Needful would be done by DDA within 12 weeks from today.

24. Finding no case to be made out to initiate action for contempt against DDA we dismiss Const. Cas. (C) No. 7/2007.