
(2009) 05 DEL CK 0459

Delhi High Court

Case No: L.P.A. No. 644 of 2008 and C.M. No. 14893 of 2008

M.T.N.L.

APPELLANT

Vs

Ganga Singh Negi

RESPONDENT

Date of Decision: May 14, 2009

Hon'ble Judges: A.P. Shah, C.J; Neeraj Kishan Kaul, J

Bench: Division Bench

Advocate: Anurag Chaudhary and Rahul Ravindran, for the Appellant; V. Shekhar Zango Sherpa, Jatin Rajput and Prashant, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The present appeal arises out of the decision of the learned Single Judge dated 28th August, 2008. Brief facts of the case are as follows:

2. The respondent was appointed as Assistant Manager (Legal) in MTNL with effect from 23.3.1995 in the pre-revised pay scale of Rs. 5400-9050/-. He was thereafter promoted from Assistant Manager (Legal) to Deputy Manager (Legal) with effect from 20.4.1999 and thereafter from Deputy Manager (Legal) to Manager (Legal) on 23.5.2002. The respondent while working as Assistant Manager (Legal) was aggrieved by fixation of his pay in the pay scale of Assistant Manager (Legal) from the date of coming into force of the revised pay scales. He, accordingly, filed a writ petition in this Court being Writ Petition (Civil) No. 1029 of 1998 and prayed for direction to the appellants to fix his pay correctly. During the pendency of that writ petition, the respondent was promoted to the post of Deputy Manager (Legal) with effect from 20.4.1999 and then to the post of Manager (Legal) with effect from 23.5.2002. The Writ Petition (Civil) No. 1029 of 1998 was disposed of by this Court vide order dated 11.8.2003 which is extracted herein below:

In view of the reply filed by respondent, this application can be disposed of. It is the case of the petitioner that the petitioner was promoted as Deputy Manager with the

respondent and in 1997 the pay scale of the posts of Assistant Manager and Deputy Manager were merged and, therefore, from April, 1999 till he was promoted to the post of Manager, he will be entitled to the pay scale of Rs. 14500-350-18700/-. The next contention of the learned Counsel for the petitioner is that on being promoted from May, 2002, the petitioner shall be entitled to the pay scale of Rs. 17500-400-22300/-. My attention has been drawn, in this regard, to page 242 of the paper-book where pay scales of public sector executives have been prescribed. According to the petitioner, the petitioner after his promotion as Manager would fall into E 6 Grade.

On the other hand, Mr. Ravi Sikri, learned Counsel for the respondent has contended that the petitioner is not entitled to the pay scale of Rs. 17500-22300/-. However, he has contended that the petitioner could be given the pay scale of Rs. 16000-20800/-, which is next pay scale on provisional basis. In the reply it has been admitted that there has been some confusion regarding the equal pay scale of Assistant Managers and the Deputy Managers caused by the merging of both the pay scales in the year 1997 and till such time the confusion is sorted out by the competent authority of the respondent, the petitioner is not entitled to the pay scale as has been demanded by the petitioner.

To my mind when the confusion is created by the respondent in their office why the petitioner be denied the benefit of the pay scale when admittedly the petitioner was promoted as Deputy Manager in April, 1999. Therefore, the petitioner should be paid the pay scale of Rs. 14500-18700/- on promotion which he was entitled to and the same has also been admitted in para 9 of the reply filed by the respondent, from April, 1999 till his promotion in the month of May, 2002. Respondent has stated that thereafter provisionally they can fix the pay of the petitioner in the pay scale of Rs. 16000-400- 20800/- till the confusion is sorted out. Counsel for the petitioner says that let the respondent give to the petitioner the pay scale of Rs. 16000-400-20800/-provisionally without prejudice to the rights to challenge the same as and when the respondent fix the pay scale of the petitioner. Let respondent pay to the petitioner from May, 2002 in the pay scale of Rs. 16000-400-20800/- as prayed by the respondent in their reply provisionally. It will be open for the parties to approach this Court after a decision is taken by the respondent to fix the pay scale of the petitioner.

In view of these observations, application stands disposed of.

CW No. 1029/1998

In view of the order passed in the application, writ petition stands disposed of in terms thereof. Dasti.

3. Pursuant to the aforementioned order passed by this Court in Writ Petition (Civil) No. 1029 of 1998, the appellants had appointed a Committee to examine the question of fixation of pay of the respondent and the Committee appointed by the

appellants gave its recommendations dated 7.11.2003. Based upon the recommendations of the Committee, the appellants passed an order dated 15/16.12.2003 vide which the decision of the Committee was communicated to the respondent and he was informed as follows:

1. Your pay has been fixed in the IDA pay- scale of Rs. 4800-200-5800-225-8275, subsequent upon the DPE guidelines dated 25.7.95. This pay-scale is the equivalent of the pre-revised IDA pay scale of Rs. 3000-5040 (Model IDA) in which you were appointed.

2. On promotion to Dy. Manager on 20.4.99, you have been fixed in the IDA pay-scale of Rs. 5400-9050 (pre-revised), which has been revised to Rs. 13000-18250 (Revision w.e.f. 1.1.97). On promotion from Dy. Manager to Manager on 23.5.2002, you have been fixed in the next IDA pay-scale of Rs. 14500-18900.

4. The respondent was aggrieved by the aforesaid communication dated 15/16.12.2003 and filed the writ petition out of which this appeal arises seeking quashing of the said communication as also the recommendations of the Committee dated 7.11.2003. The respondent also prayed for directions to the effect that his pay to the post of Manager (Legal) be fixed in the scale of Rs. 17500-22300/-. While the writ petition was pending in this Court, the appellants issued yet another office order dated 16.12.2004 which was in super session of all earlier orders in regard to the pay scale granted to the respondent right from the date of his appointment as Assistant Manager (Legal). The said office order dated 16.12.2004 reads as follows:

Office order

In super session of all earlier orders in this regard, the grades and pay scales of Sh. G.S Negi, Manager (Legal), MTNL Delhi, are hereby fixed in IDA pay scales, as under:

Sl. No.	Fixation w.e.f.	To	Grade	Scale
1	27.3.1995	31.12.1996	E2	4800-200- 5800-225- 8275 (1992 IDA revision)
2	1.1.1997	19.4.1999	E2	10750-300- 16750 (1997 revision)
3	20.4.1999	22.5.2002	E3	13000-350- 18250 (1997 IDA revision)

This issues with the approval of competent authority. Hindi version will follow.

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5. The respondent filed an application for amendment seeking to amend the prayer clause to include therein the challenge to the aforesaid office order. The said application was allowed by this Court vide order dated 28.1.2005.

6. The learned Single Judge has rightly held, in our view, that the order dated 11.8.2003 passed in Writ Petition (Civil) No. 1029 of 1998 has finally decided the matter regarding fixation of pay of the respondent up to the rank of Deputy Manager (Legal) and what was left to be considered by the appellants in the said order was fixation of pay of the respondent to the post of Manager (Legal) while granting him the pay scale of Rs. 16000-20800/- provisionally. The said order dated 11.8.2003 was not challenged by the appellants and became final between the parties. In our view, the learned Single Judge was correct in observing that the appellants could not sit in appeal over the order of this Court dated 11.8.2003 and re-fix the pay of the respondent while he was holding the post of Assistant Manager (Legal) or Deputy Manager (Legal) because his pay in these two ranks stood finally determined by the order dated 11.8.2003. This Court in Writ Petition(Civil) No. 1029 of 1998 has directed that the respondent will get the pay scale of Rs. 14500-18700/- when he was promoted to the post of Deputy Manager (Legal) with effect from April, 1999. The learned Single Judge took note of the fact that there was dispute between the parties with regard to pay scale to be granted to the respondent yet, he was promoted to the post of Manager (Legal) with effect from May, 2002. The respondent was demanding pay scale of Rs. 17500-22300/- whereas the counsel appearing on behalf of the appellants, at the time of hearing of the earlier Writ Petition being Writ Petition (Civil) No. 1029 of 1998, made a statement on 11.8.2003 that the pay of the respondent at the time of his promotion to the post of Manager (Legal) could be provisionally fixed in the pay scale of Rs. 16000-20800/- and his claim for fixation of pay in the scale of Rs. 17500-22300/- shall be re-examined by the respondent. The learned Single Judge rightly held that when the pay of the respondent was fixed in the pay scale of Rs. 14500-18700/- with effect from April, 1999, when he was promoted to the post of Deputy Manager (Legal) then how could his pay be fixed in the same pay scale or in a lesser scale when he was promoted to the post of Manager (Legal) with effect from May, 2002.

7. We are in agreement with the finding of the learned Single Judge that admittedly the pay scale of Rs. 16000-20800/- was a step higher to the scale of Rs.

14500-18700/- granted to the respondent at the time of his promotion to the post of Deputy Manager (Legal) and, therefore, the respondent had made out a case for grant of pay scale of Rs. 16000-20800/- with effect from May, 2002, when he was promoted to the post of Manager (Legal).

8. It was sought to be contended on behalf of the appellants that the post of the Manager is a post in Grade E-4 and even as late as 8.9.2008 the scale notified for the said Grade E-4, i.e., the post of Manager was Rs. 14500-18700/-. It was further submitted on behalf of the appellants that office order dated 23.3.2004 also specified the pay scale of Grade E-4 to be Rs. 14500-350-18700/-. Per contra it was submitted by the learned senior counsel appearing on behalf of the respondent that the office order dated 17.3.1997 issued by the appellants clearly showed that Grade E-3 was equivalent to the post of Assistant Manager, Grade E-4 was equivalent to the post of Deputy Manager and Grade E-5 was equivalent to the post of Manager (page 195 of the paper book). In support of the said arguments, reliance was also placed on office order dated 16.12.2004 issued by the appellants wherein Grade E-4 was shown as equivalent to the pay scale of Deputy Managers, Grade E-5 was shown as equivalent to the pay scale of Manager and Grade E-6 was shown as equivalent to the pay scale for the post of DGM (page 332 of the paper book). Further learned senior counsel for the respondent also relied on the views of Dr. S. Balasubramanian, Independent Director of the appellants dated 21.8.2007 on implementation of IDA pay scales to directly recruited executives of MTNL (page 131-133 of the paper book). On the basis of the said document it was sought to be contended by the respondent that the appellants had always understood Grade E-4 to be equivalent to the post of Deputy Manager and that the Manager was entitled to the scale of Rs. 16000-20800/-. Reliance was also placed on the examination and recommendations of the committee appointed by the appellants to look into the representations of executives to urge the point that the Manager had been placed by the appellants in the scale of Rs. 16000-20800/- (page 107 of the paper book).

9. Thus, placing reliance on the above documents, it was argued on behalf of the respondent that the appellants have always understood Grade E-4 to be equivalent to the post of Deputy Manager and Grade E-5 to be equivalent to the post of Manager. It was also urged that the appellants had always placed the post of Manager in the scale of Rs. 16000-20800/- and the post of Deputy Manager in the scale of Rs. 14500-18700/-. It was further argued that it was not open to the appellants to now urge at this belated stage that the Grade E-4 was equivalent to the post of Manager.

10. In view of the documents relied on by the respondents and whose veracity has not been denied by the appellants, we are in agreement with the contention of the respondent that Grade E-4 was equivalent to the post of Deputy Manager and not the Manager and as per the appellants' own understanding/circulars and office orders, the pay scale for the post of Manager was Rs. 16000-20800/- and the pay

scale for the post of Deputy Manager was Rs. 14500-18700/-. It was, thus, clearly now impermissible for the appellants to rely on an office order dated 8.9.2008 to contend and urge that Grade E-4 was for the post of Manager which fell in the pay scale of Rs. 14500-350- 18700/-.

11. Moreover, as rightly held by the learned Single Judge, the matter regarding fixation of pay of the respondent up to the rank of Deputy Manager (Legal) stood finally decided vide order dated 11.8.2003 passed in Writ Petition (Civil) No. 1029 of 1998 also in the said order the counsel for the appellants had made a statement that the pay of the respondent at the time of his promotion to the post of Manager could be provisionally in the scale of Rs. 16000-20800/- and his claim for fixation of pay scale in the scale of Rs. 17500-22300/- would be re-examined by the appellants. Clearly, this statement was made by the counsel for the appellants in the light of various office orders issued by the appellants from time to time as also the internal documents of the appellants whereby the appellants themselves have understood and placed Grade E-4 as equivalent to the post of Deputy Manager in the pay scale of Rs. 14500-18700/- and placed Grade E-5 equivalent to the post of Manager in the Grade of Rs. 16000-20800/-.

12. Learned Single Judge was right in holding that the impugned communication dated 15/16.12.2003 which was based on the recommendations of the Committee dated 7.11.2003 and the subsequent office order dated 16.12.2004 were clearly in derogation of the order passed by this Court in Writ Petition (Civil) No. 1029 of 1998 dated 11.8.2003 and correctly, therefore, set them aside. The learned Single Judge, in our view, also rightly allowed the Writ Petition and directed the appellants to fix the pay of the respondent in the pay scale of Rs. 16000-20800/- with effect from 23.5.2002 when he was promoted to the post of Manager (Legal) and pay him the arrears of salary, if any.

13. Learned senior counsel for the respondent also brought to our notice that the status and pay scale of various posts as explained by the respondent had been consistently followed by the appellants in case of other officers. Reference was made to the case of Sh. R.C. Sen (page 332 of the paper book), who was in the Grade of E-4 and had been placed in the pay scale of Rs. 14500-350-18700/- and thereafter on being promoted to the Grade of E-5 was placed in the pay scale of Rs. 16000-400-20800/-. Reliance was also placed by the respondent on the case of Sh. S.R. Sayal (page 333 of the paper book) who was granted the pay scale of Rs. 14500-350-18700/- in the E-4 Grade, which was equivalent to the post of Deputy Manager. Respondent argued that it was only in the case of the respondent that the said benefit was being denied. It was also urged before us by the respondent that the order dated 11.8.2003 passed in Writ Petition (Civil) No. 1029 of 1998 had not been challenged by the appellants and had become final between the parties. The said contention had been rightly accepted by the learned Single Judge as well. The counsel for the respondent also urged that the appellants had always understood

the pay scale for the post of the Manager to be Rs. 16000-20800/- and no concession had been granted in the previous round of litigation. In fact, as per the respondent, he had claimed the pay scale of Rs. 17500-22300/- in Writ Petition (Civil) No. 1029 of 1998 and what the court had granted to him on the basis of the statement made by the counsel for the appellants was the pay scale of Rs. 16000-20800/-.

14. There is clearly merit in the submissions of the respondent. In the light of the discussion herein above, the order of the learned Single Judge warrants no interference. Accordingly, the appeal is dismissed. The pending application stands disposed of as well.