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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 15.05.2024

+ W.P.(C) 239/2016
KISHOR KUMAR MAKWANA Petitioner
Through: Dr. Shiva Sharma, Adv.

versus

UNION OF INDIA & ANR Respondent
Through: Mr. Vivek Goyal, CGSPC with Mr.
Gokul Sharma, Ms. Sanjeev Joyti, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J (ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 25.08.2015 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 4330/2013. Vide the impugned order, the learned Tribunal has dismissed the Original Application (O.A.) filed by the petitioner/applicant wherein he had sought the following reliefs:
 - (i) *to quash and set aside the order dated 23.09.2015 in RA No. 242/2015 and order dated 25.08.2015 in OA No. 4330/2013 passed by the Central Administrative Tribunal, Principal Bench, New Delhi and consequential order dated 05.10.2015.*
 - (ii) *To quash and set aside the impugned order dated 06.03.2013, 01.05.2013 and direct the respondents*



to restore the pay of petitioner as it was before passing impugned order 06.03.2013 & 01.05.2013 and grant all arrears of pay with 10% interest.

- (iii) *To allow the petitioner continue to draw the pay of Rs. 29740/- + GP Rs. 5400/- pm as on 01.7.2010 on reversion to his substantive post of Economic Officer (Project Appraisal) w.e.f. 30.06.2010 (AN) as he was in receipt of 1st financial upgradation under ACP Scheme since 20.12.2000.*
- (iv) *To allow the writ petition with cost.*
- (v) *To pass such other and further order which their Lordships of this Hon'ble High Court deem fit and proper may please be passed.*

2. In support of the petition, learned counsel for the petitioner submits that the petitioner had joined the service as a Senior Research Assistant now re-designated as Economic Officer in the project appraisal division of the respondents on 20.12.1990. Based on his performance, he was promoted as a Research Officer on 08.04.1996. Even though, the said promotion was initially stated to be on *ad hoc* basis for a period of six months, but, this period was, admittedly, extended for more than 14 years. It is, thereafter, on 13.07.2010 that the respondents decided to revert him to the post of Senior Research Assistant. Consequently, the respondents passed an order on 06.03.2013 refixing the petitioner's pay by reducing the same to that of a Senior Research Assistant and sought to make recoveries as the petitioner had continued to receive the higher salary of a Research Officer till 06.03.2013. Further, he submits that learned Tribunal has



failed to appreciate that once the respondents had permitted the petitioner to continue to work on a higher post i.e., on the post of Research Officer for a period of more than 14 years, they could not have reverted him without there being any lapse on his part.

3. Without prejudice to his aforesaid plea, he submits that even if the respondents were entitled to revert the petitioner to the post of Research Officer after more than 14 years of service, his salary ought to have been protected as it is causing grave prejudice and hardship to the petitioner as he is now not only being paid a lower salary but is also being subjected to recoveries of the differential between the two salaries at this stage, especially, when he is at the verge of his superannuation. In support of his plea, he places reliance on a decision of the Apex Court in *Badri Prasad v. Union of India, (2005) 11 SCC 304*. Furthermore, he contends that when it is an admitted position that the petitioner had not made any misrepresentation, no recoveries could have been made from him. He, therefore, prays that the impugned order as also the respondents' order dated 06.03.2013, whereby his pay was re-fixed by reducing the same be set aside.
4. On the other hand, learned counsel for the respondents supports the impugned order and submits that merely because the petitioner was permitted to work on a higher post for more than 14 years, does not grant him any right to claim that he was entitled to continue on the said post, when it was always made clear to him that his promotion to the post of Research Officer was only on *ad hoc* basis. He contends that the petitioner having been rightly reverted, the respondents were justified in making the recoveries qua the excess amount paid to him



during the period when he had already been reverted to the post of Economic Officer. He, therefore, urged that the respondents could not be faulted for seeking recovery from the petitioner. He, therefore, prays that the writ petition be dismissed.

5. Having considered the rival submissions of the parties, we find that though in principle, the respondents cannot be faulted for reducing the pay of the petitioner after his reversion to the post of Economic Officer w.e.f. 13.07.2010, the fact remains that the petitioner had worked on a higher post as a Research Officer for more than 14 years. By placing reliance on *Badri Prasad (Supra)*, learned counsel for the petitioner has vehemently urged that the pay which the petitioner was drawing as a Research Officer should be protected, we are of the view that once there is no challenge to the reversion *per se*, the petitioner cannot be granted pay protection qua the pay being drawn by him after 06.03.2013. However, having said that, we cannot lose sight of the admitted position that the petitioner had worked on a higher post for more than 14 years during which period, admittedly, not only he was drawing a higher salary but all throughout there were no complaints of any kind against him at any stage whatsoever. In these circumstances, coupled with the fact that now he is at the verge of superannuation, the respondents ought to consider releasing of his terminal benefits by taking into account the higher salary which he was drawing during those 14 years when he was working as a Research Officer. This, in our view, under the peculiar circumstances involved would balance fairly the equities as the petitioner would then receive at least some benefits for the 14 years long service which he



had rendered on a higher post. The same is in consonance with the course of action adopted by the Apex Court in *Badri Prasad (Supra)*. The relevant extracts of the said decision as contained in para 11 to 15 thereof, read as under:

11. It is not disputed that the appellants were made to work on the post of Storeman-cum-Clerk which is a higher post carrying higher scale of pay. They were made to work on that higher post not for a short period as a stopgap arrangement but for a long period of more than ten years. It is on these facts that the appellants have raised their claim for being allowed to continue on the higher post and questioned drop of their emoluments.

12. Reliance is placed on the decision of this Court in the case of Inder Pal Yadav v. Union of India [(2005) 11 SCC 301] . In that case, similarly placed railway employees, who were substantively holding Group 'D' post but were made to work for long period on higher Group 'C' were granted partial relief by making the following directions: (SCC p. 303, paras 6-7)

“6. However, while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other project, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by such



contemporary employees at the time of such reposting of the petitioners is based on selection.

7. Additionally, while it is open to the Railway Administration to utilise the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade tests which may have been passed by the petitioners as well as the length of service rendered by the petitioners in the several projects subsequent to their regular appointment.”

13. The practice adopted by the Railways of taking work from employees in Group ‘D’ post on higher Group ‘C’ post for unduly long period legitimately raises hopes and claims for higher posts by those working in such higher posts. As the Railways is utilising for long periods the services of employees in Group ‘D’ post for higher post in Group ‘C’ carrying higher responsibilities, benefit of pay protection, age relaxation and counting of their service on the higher post towards requisite minimum prescribed period of service, if any, for promotion to the higher post must be granted to them as their legitimate claim.

14. As held by the High Court the appellants cannot be granted relief of regularising their services on the post of Storeman/Clerk merely on the basis of their ad hoc promotion from open line to higher post in the project or construction side. The appellants are, however, entitled to claim age relaxation and advantage of experience for the long period spent by them on higher Group ‘C’ post.

15. Without disturbing, therefore, orders of the Tribunal and the High Court the appellants are held entitled to the following additional reliefs. The pay last drawn by them in Group ‘C’ post shall be protected even after their



repatriation to Group 'D' post in their parent department. They shall be considered in their turn for promotion to Group 'C' post. The period of service spent by them on ad hoc basis in Group 'C' post shall be given due weightage and counted towards length of requisite service, if any, prescribed for higher post in Group 'C'. If there is any bar of age that shall be relaxed in the case of the appellants.

6. In the light of the aforesaid, we are of the view that this is a fit case where the petitioner ought to be granted his terminal dues by taking into account the salary which he was drawing for 14 years as a Research Officer. Furthermore, the respondents' decision to make recoveries of the differential amount for the period between 13.07.2010 to 06.03.2013, from the petitioner, when they continued to pay him the higher salary of a Research Officer, despite his having been reverted as a Economic Officer is also unsustainable; it being an admitted position that the petitioner was in no way responsible for receiving this higher amount.
7. For the aforesaid reasons, we set aside the impugned order and allow the writ petition by directing that the demand made by the respondents for the refund of the differential higher amount paid to the petitioner for the period between 13.07.2010 to 06.03.2013 would stand quashed. We, further direct that though taking into account his long service of more than 14 years in the post of Research Officer, the terminal benefits of the petitioner, including pension will be fixed by granting him the benefits of the said higher scale which he was drawing as a Research Officer for more than 14 years, he will not be entitled to the pay of the Research Officer from which post he stands



reverted.

8. The writ petition is disposed of in the aforesaid terms.

(SAURABH BANERJEE)
JUDGE

(REKHA PALLI)
JUDGE

MAY 15, 2024

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