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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition No. 4460 of 1994

Petitioner : P.N. Verma

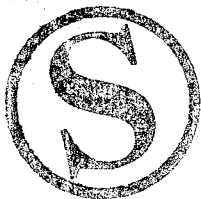
Versus

Respondents : M.P. Electricity Board through Secretary
and others.

Post for order on 14th-5-2008

Sd/-
Satish K. Agnihotri
Judge

12-5-2008



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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4460 of 1994

Petitioner P. N. Verma, S/o Shri A.R.Verma,
aged about 50 years, resident of
Pandri, Raipur (MP) Place of Duty:
City Construction Division, M.P.
Electricity Board, Raipur (M.P.)

Versus

Respondents 1. M.P. Electricity Board through
Secretary, Shaktinagar, Rampur,
P.O. Jabalpur (M.P.).
2. Shri S.P. Sinha, Assistant Engineer,
through the Secretary, M.P.
Electricity Board, Rampur, Jabalpur
(M.P.)
3. Chhattisgarh State Electricity
Board, through Secretary,
Danganiya, P.O. & Distt. Raipur
(C.G.).

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION
OF INDIA

Single Bench : Hon'ble Mr. Satish K. Agnihotri, J.

Shri B. R. Ghosh, Advocate for the petitioner.

Shri Yogesh Pandey, Advocate for the respondents.

ORDER

(Passed on this 14th day of May, 2008)

1. By this petition, the petitioner has impugned the order dated 29.6.1991 (Annexure P/1), issued by the respondent No.1 Madhya Pradesh Electricity Board, whereby the petitioner was granted benefit of higher pay scale of Assistant Engineer w.e.f. 1.4.1990. The claim of the petitioner is that the respondent No.2 (Shri S. P. Sinha), was appointed along with the petitioner vide order dated 21.3.1973(Annexure P/5) and he was granted the benefit of higher pay scale of Assistant Engineer vide order dated



17.3.1989(Annexure P/8) w.e.f. 6.5.1982, therefore, the petitioner is also entitled to the same benefit w.e.f. 6.5.1982.

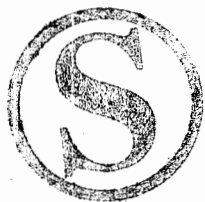
2. Shri B. R. Ghosh, learned counsel appearing for the petitioner submits that initially the petitioner was appointed as Workcharged Supervisor in the year 1967. Thereafter, the petitioner, as well as the respondent No.2, were appointed as regular Supervisor by order dated 21.3.1973(Annexure P/5). The petitioner was confirmed on the post of Supervisor w.e.f. 1.4.1977 by order dated 1.6.1979 (Annexure P/6). The petitioner was a Junior Engineer. The next higher promotional post for the person holding the post of Junior Engineer is, Assistant Engineer. The respondent/Board issued various circulars time to time, enabling the officers and employees of certain cadres to opt for the next higher pay scale on completion of 9/10 (Nine/Ten) years of service in a particular cadre. In sequence of those circulars, by circular dated 11.12.1984 (Annexure P/7) the Board had taken certain further decisions.
3. The circular dated 11.12.1984 (Annexure P/7) provides that if an officer or employee, who is entitled to opt for higher scale and who has exercised option in accordance with the conditions laid down, is not found suitable for giving the benefit from the date from which he has exercised the option, the intimation to that effect, that the employee has not been found fit for giving higher scale under 9/18 years would be sent to the employee as soon as possible after the decision is taken. The circular further provides that the cases of such employees would be reconsidered after their confidential report (C.R.) for further years are received as is being done in the case of promotions and it will not be necessary for the employees to give option afresh. However, if an employee himself decides not to exercise option, he should intimate about it in writing to the Joint Secretary (P)-I. This circular also provides that if an employee is found fit on reconsideration, he would be



entitled to the benefit of higher scale from 1st April of the following year for which the 1st C.R. is available.

4. Learned counsel appearing for the petitioner further submits that the petitioner joined his services on the post of Junior Engineer in regular grade on 23.3.1973. Since the petitioner fulfilled all the required necessary conditions, in accordance with the circulars, issued for grant of higher pay scale, he submitted his option (Annexure P/7-A) for the higher pay scale for the post of Assistant Engineer w.e.f. 23.3.1983, on completion of 9 (nine) years of service on the post of Junior Engineer. By order impugned dated 29.6.1991 (Annexure P/1) the petitioner was granted benefit of higher pay scale for the post of Assistant Engineer w.e.f. 1.4.1990.
5. Learned counsel appearing for the petitioner next contends that the respondent No.2 (Shri S.P.Sinha) was a similarly situated Junior Engineer, as he was appointed on the post of Supervisor along with the petitioner vide order dated 21.3.1973 (Annexure P/5). The respondent No.2 was granted the benefit of higher pay scale of Assistant Engineer vide order dated 17.3.1989 (Annexure P/8) w.e.f. 6.5.1982. Therefore, the petitioner is also entitled for the same benefit w.e.f. 6.5.1982. Not granting the same benefit to the petitioner, as was granted to the respondent No.2 amounts to discrimination amongst similarly situated persons.
6. Shri Yogesh Pandey, learned counsel appearing for the respondents, per contra, submits that the petitioner had submitted the application for grant of higher pay scale on 21.7.1987, opting for the benefit w.e.f. 23.3.1982. As per the Rules the case of the petitioner was considered for grant of higher pay scale w.e.f. 21.7.1987 by the Selection Committee but the petitioner was not found fit on the basis of C.R.s for the last five years (1983 to 1987). The case of the petitioner was reviewed by the Selection Committee in June, 1988 and the petitioner was again not found fit for grant of the same benefit w.e.f. 1.4.1988

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and 1.4.1989 on the basis of his C.R.s. The case of the petitioner for grant of benefit of higher pay scale was again reviewed in April, 1991, wherein the Selection Committee found the petitioner fit for grant of higher pay scale w.e.f. 1.4.1990 and accordingly vide order dated 29.6.1991 (Annexure P/1) the benefit was granted.

7. In regard to the objection of the petitioner for grant of benefit of higher pay scale for the post of Assistant Engineer to the respondent No.2 (Shri S.P.Sinha), learned counsel appearing for the respondents submitted that as per the Board's order dated 6.5.1982, the respondent No.2 submits his option on completion of 10 years of service. The name of the respondent No.2 was included in the panel prepared in January, 1984. Earlier vide order dated 20.1.1984 the respondent No.2 was granted the benefit of higher pay scale on the post of Assistant Engineer w.e.f. 20.4.1983, which was modified by order dated 17.3.1989 (Annexure P/8) and the benefit was granted to the respondent No.2 w.e.f. 6.5.1982.
8. Shri B. R. Ghosh, learned counsel appearing for the petitioner submitted that the petitioner has filed rejoinder to the return filed by the respondents No. 1 and 2 on 11.6.2007, wherein it is categorically submitted that the petitioner had submitted his option for grant of benefit of higher pay scale w.e.f. 23.3.1982, in time, which was forwarded by the Divisional Engineer, Raipur by memo No. DER/Estt./PF/832 dated 2.2.1985. The letter dated 21.7.1987 (filed by the respondents No. 1 and 2 at page 10 along with the return) was simply a reminder for consideration of option of the petitioner.
9. I have heard learned counsel for the parties, perused pleadings and documents appended thereto.
10. On perusal of the papers, it appears that the respondent No.1 by order dated 6-5-1982 (Annexure R/2), decided to grant benefits to the officers belonging to Engineering and other specified



cadres, who were not able to get promotion to the higher posts for want of clear vacancies.

11. The scheme provided as under:

"2. An officer, who has completed 9/10 years of service in the same grade in a particular pay scale as indicated in para 4 of this order and has not got promotion for no fault of his own, i.e., for want of clear vacancy, will be eligible for exercising option to the next higher scale from the date following the date on which he completes 9/10 years service in the same grade and his pay shall be fixed in the next scale in accordance with the rules governing promotion from one grade to another grade, under the normal fixation rules.

3. This benefit will be given irrespective of the fact whether suitable vacancies in the higher scale are available or not; provided that:-

(i) This option will be allowed in only such of the cases in which higher grade posts are available.

(ii) He is otherwise, fit for promotion on the basis of overall performance as per normal rules of the Board.

(iii) He has passed necessary examination prescribed, if any, by the Board required to be passed as per rules of the Board to get promotion to the higher grade.

(iv) He is continued in the same grade of post not as a measure of disciplinary action. The case of persons, who have been awarded punishment will be considered after the punishment period is over.

(v) He does not refuse promotion after the date of implementation of these orders. In other words, it would mean that refusal to accept promotion after the issue of these orders will debar an officer from the benefit of this order.

(vi) Not exercising the option to avail 9/10 year-rule in the present grade will, however, not debar an officer from being eligible for promotion under the normal rules.

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(vii) An officer on his being granted higher scale on conditions prescribed herein will be accommodated in his existing post, if a regular post in the higher 'scale' is not available and his existing post shall be treated as having been temporarily upgraded only for the purpose of withdrawal of pay without any change of designation or position and this will be personal to the officer concerned. He will continue to perform the same functions and discharges the same duties and carry the same designation till he is absorbed against a regular vacancy, and on his absorption in a higher post the upgraded post shall stand automatically down graded. He will be entitled to the benefit of any fixation as per rules governing promotion from one grade to another. Consequent to option for the higher scale, he would also be entitled to the benefits of Compensatory Allowances, House Rent Allowances, Free Electricity and other benefits as are applicable to officers working in the higher pay scale. Absorption in the regular post shall not be treated for any purpose as a further promotion and will not attract the benefit of any fixation due on promotion.

(viii) This benefit will be available to an officer only once in his career and he will have the liberty to select the date from which he would like to avail of this benefit.

(ix) The seniority in the lower grade shall be maintained as per normal seniority procedure and option for higher scale under these orders will not entitle the officer to have higher seniority over the officers, who have not opted for the same and they will be considered for absorption in the higher grade only as per normal seniority list and only, if they qualify for absorption in the higher grade as per rules in force. The seniority in the higher grade will be based on the basis of date of absorption/promotion in the higher grade and not on the basis of date of opting for higher scale.



(x) If as a result of a senior officer not exercising option to avail of the benefit of the 9/10 year-rule in the existing grade and his junior/s opting for this benefit, the latter gets higher salary, no relief will be given to the former.

(xi) An officer, who takes the benefit of this rule will have to give an undertaking in writing that he shall, on his absorption against a regular post, join at the place of his posting. On his refusal to do so, he shall forfeit the benefit of this rule and shall stand reverted to the original lower grade consequent upon which he shall draw the pay which he would have drawn had he not been given the benefit of this rule. However, in such cases, there shall be no recovery of the amount already paid.

4. This benefit shall be available to the following categories of officers from the scales to the scales noted against each:-

S. No	Cadre	Existing pay Scale	Higher pay scales to be given under 9/10 year-rule	Years after which an officer will be eligible for next higher scale.
1.	Sub-Engineer	Rs.665-20-745-22-833-EB-25-1008	Rs.720-40-1000-EB-50-1300	NINE YEARS
2.	Asstt. Engineer Medical Officer, programmer, Senior Chemist	Rs.720-40-1000-EB-50-1300	Rs.1050-50-1300-EB-60-1600	NINE YEARS
3.	Divisional Engineer, Senior Chemist	Rs.1050-50-1300-EB-60-1600	Rs.1550-75-2000	NINE YEARS

The 20% posts of Sub-Engineers converted to Selection Grade will continue to be operated upon as per the present practice.

5. These orders would be effective from the date of issue of this order and all those officers, who have completed 9/10 years of service in their present cadre as on the date would be entitled to the benefit of these orders with effect from the date of issue of

this order. Officers, who would be completing 9/10 years service after issue of these orders would be eligible for this benefit after they complete 9/10 years service.

6. No officers who have completed 9/10 years of service as provided for in para 4 of the order as on the date of implementation of this order shall have to submit their option within 2 months of the date of the order, if they wish to avail the benefit of this order from the date of the order. If option is not exercised within this stipulated period, further option would be from a prospective date only.

7. If an officer prefers to take benefit of this rule after he has completed 9/10 years, it will be only from a prospective date indicated by him and shall not be from a retrospective date.

8. The date from which an officer wishes to avail this option shall be the date specified by him in the application, which cannot be a date earlier to the date of the application.

9. Officers concerned will have to give an undertaking in form-A appended herewith required against para 3 (xi) indicated earlier. Option for availing benefit of this order will be required to be exercised in Form-B appended herewith. The officers concerned should submit their option in Form-B with undertaking in Form-A to the Personnel Section through their controlling officers. The application so received shall be processed by the personnel Section and after approval of the competent selection authority, Personnel Section would pass orders and Regional Accounts Officer/Deputy Chief Accounts officer, as the case may be, would fix accordingly the salary of the officer concerned in the higher scale from the date indicated in the order.

10. Personnel Section shall maintain a register of such officers, who have opted for higher scale.

BY ORDER OF THE BOARD

Sd/-"



12. The contention of learned counsel for the petitioner is that the petitioner made an application within a period of two months from the date of the order. However, on scrutiny of the record, it is found that there is no application available which was made within a period of two months. The case of the respondent is that the petitioner has made an application for the first time on 21-7-1987 (Annexure R/1), claiming benefit of higher pay scale with effect from 23-3-1982. Annexure R/1 does not mention about any application filed earlier which, according to learned counsel for the petitioner, is reminder. The petitioner has also not filed any copy of the application, which he has filed within a period of two months from the date of the order. Thus, it is established that the application was made on 21-7-1987. According to the respondent, the case of the petitioner was considered by the Selection Committee about conditions as provided in the order dated 6-5-1982, the petitioner was not found fit, thus, he was granted second Kramonnathi, on being fit, in the year 1991.
13. On perusal of the proceedings of the Selection Committee dated 15-8-1987 (Annexure R-III), it is found that name of the petitioner was considered. The next higher promotional post for the person holding the post of Junior Engineer is Assistant Engineer. The Selection Committee considered cases of sixty Junior Engineers (T&D). The Selection Committee could not consider ten cases as nine of them were appointed as Assistant Engineers and one was absconding. The Committee selected 35 Junior Engineers (T&D) for the appointment to the post of Assistant Engineer (T&D) on the basis of above criteria. On finding them fit, 14 Junior Engineers including the petitioner were not selected for promotion to the post of Assistant Engineer (T&D) as they did not have the qualification fixed by the Selection Committee. The case of the petitioner was considered

in each Selection Committee, but he was ultimately found fit in the Section Committee in the year 1991. Accordingly, the petitioner was granted promotion to the higher pay scale vide order dated 29-6-1991 (Annexure R/6). After having examined all the facts of the case supported by the Selection Committee proceedings, the order dated 29-6-1991 (Annexure R/6), whereby the petitioner was granted benefit of higher pay scale with effect from 1-4-1990, is held as proper.

14. The contention of learned counsel for the petitioner that Mr. S.P. Sinha/respondent No.2 and the petitioner were similarly situated is also not sustainable as Mr. S.P. Sinha has made the application earlier. The case of the petitioner was considered immediately after he made the application on 21-7-1987. The petitioner was considered in each and every Selection Committee and he was not found fit for grant of promotion to the higher post. The order dated 6-5-1982 makes it clear that the officers should be eligible for promotion to the higher post and the benefit of Kramonnati can be granted only in the event officer is found fit for promotion to the higher pay scale, but there is no vacancy available in the promotional post. The petitioner was not found fit, therefore, he was not granted Kramonnati earlier. On being found fit by the Selection Committee, the petitioner was granted Kramonnati vide order dated 29-6-1991 with effect from 1-4-1990. There is no perversity or irregularity in the order and the petitioner is not entitled to any parity with respondent No.2 or the benefits with effect from 6-5-1982.
15. In the matter of National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others¹, wherein the decision of the Selection Committee was in question, the Supreme Court observed as under:

¹ 1992 Supp (2) SCC 481

"7..... Administrative authority is under no legal obligation to record reason in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement."

"8..... It should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion."

16,, In view of foregoing and for the reasons mentioned herein above and applying well settled principle of law to the facts of the present case, there is no merit in the case. Accordingly, the petition is dismissed. No order as to costs.

Thakur/
Raju

Sd/-
Satish K. Agnihotri
Judge