

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(11)

OA No. 1169/97

New Delhi, this the 30th day of June, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri Suresh Gupta,
S/o Shri R.D. Gupta,
Incharge, Complaints Cell,
(Designated as Cane Weaver),
Office of Garrison Engineer (North),
A.F. Palam,
Delhi Cantt. Applicant
(By Advocate: Sh. B.S. Mainee)

Vs.

UNION OF INDIA

Through

1. The Secretary to the
Government of India,
Ministry of Defence,
South Block,
New Delhi.
2. The Chief of Army Staff,
Senā Bhawan,
New Delhi.
3. The Engineer-in-Chief,
Kashmir Bhawan,
New Delhi.
4. The Chief Engineer,
Western Command,
Chandi Mandir,
Chandigarh.
5. The Chief Engineer,
Air Force,
Headquarter Chief Engineer,
Jullundur zone,
Jullundur Cantt. Respondents.
(By Advocate: Ms. Meera Chhibber)

O R D E R

Hon'ble Shri T.N. Bhat, Member (J)

The applicant in this OA, who has passed his
Diploma in Civil Engineering in the year 1964, was
appointed as Superintendent B & R Grade II in the month of
May 1965. He, however, partially lost his eye-sight due

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to some disease in the year 1981 and the respondents accordingly contemplated to dispense with his services on account of the applicant's handicapped condition. The applicant filed a Writ Petition in the Apex Court praying for quashing of the order dated 28.9.81 by which the respondents sought to terminate the services of the applicant. The said Writ Petition was disposed of with a direction to the respondents that they shall offer a post in grade 'D' to the applicant and the applicant will accept the same on condition that he will continue to get pay and allowances attached to the grade 'C' post which he was already holding and that in case of a vacancy in grade 'C' the applicant will be given preference provided a suitable grade 'C' post is available which can be manned by the applicant.

2. The respondents accordingly issued an order in the month of October, 1986 appointing the applicant as "Cane Weaver" with the pay scale of Rs.210-290, which is the pay scale of a grade 'D' post. However, his pay was fixed at Rs.700/- p.m. in the pay scale of Rs.425-700. It was further ordered that in case of a suitable vacancy the applicant shall be absorbed against that vacancy. On revision of pay scales the applicant was given the revised pay scale of Rs.1400-2300. He, however, claimed the higher pay scale of Rs.1640-2900 in pursuance to the Government of India notification dated 22.3.91 by which two pay scales were granted to Junior Engineers viz. Rs.1400-2300 and Rs.1640-2900. According to the said notification the higher pay scale was to be granted on completion of 5 years of service, subject to the rejection of 'Unfit'. It was further stipulated in the said

Writ Petition

notification that those Junior Engineers who cannot be promoted to the post of Assistant Engineer in the pay scale of Rs.2000-3500 due to non-availability of vacancies will be allowed the same pay scale, i.e., Rs.2000-3500 on a personal basis after completion of 15 years of service as Junior Engineer. The applicant claims the higher pay scale of Rs.2000-3500 on the basis of the aforesaid notification.

3. But the main grievance of the applicant seems to be that he has been subjected to indignity, as his designation as "Cane Weaver" is demeaning and that even though the applicant is actually performing the duties of Complaint Cell Incharge, he continues to be designated as a Cane Weaver.

4. The applicant also seeks the benefit of the provisions contained in "THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995", (herein after referred to as the 1995 Act) which specifically provided that no promotion shall be denied to a person merely on the ground of his disability.

5. The respondents have filed a detailed counter in which the essential facts have been admitted, but the claim of the applicant has been contested on the ground that there is no suitable group 'C' post which can be manned by the applicant who, according to the respondents, has become blind. It is further averred by the respondents that the applicant had agreed to accept a group 'D' post provided his pay in group 'C' is protected

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and he is considered for appointment against a group 'C' post in future provided a post which can be manned by the applicant becomes available.

6. The applicant has also filed a rejoinder.

7. We have heard at length the arguments of the learned counsel for the parties and have perused the material on record.

8. We may state at the very outset that the higher pay scale of Rs.1640-2900 has already been granted to the applicant in pursuance to the notification dated 22.3.91 and his pay has been fixed at Rs.2060/- w.e.f. 1.1.86. The respondents have also in their counter given an assurance that after due consideration the applicant shall be granted the other benefits under the aforesaid notification viz. giving him the still higher pay scale of Rs.2000-3500 from the date the same became/becomes admissible to him. The only difficulty that the respondents are encountering is to find a post in group 'C' which can be manned by the applicant. The respondents have taken the plea that the department in which the applicant is working is a construction department and, therefore, deployment of a blind person on planning/estimating/execution/supervision etc. would be out of question, as it would be unsafe to do so. This appears to us to be a valid reason for not giving to the applicant promotion/redesignation to a group 'C' post.

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9. However, on going through the reply of the respondents to paras 4.5 and 4.6 of the OA we find that the applicant has been actually performing the duties of the persons Incharge of the Complaint Cell which are certainly not the duties of a group 'D' employee. It is also admitted by the respondents that the applicant's designation as "Cane Weaver" is only, what the respondents call, "a paper formality". As already mentioned, the main grievance of the applicant appears to be that he is still being designated and described as a "Cane Weaver" which he finds demeaning. In these circumstances we do not find any reason why the respondents cannot redesignate the applicant as "Complaint Cell Incharge" with the condition that the said post shall be a group 'D' post so long as the applicant holds it. The applicant can be continued on that post till a suitable group 'C' post which can be manned by him is located. We are convinced that if such a course is adopted by the respondents the main grievance of the applicant shall stand removed.

10. As regards the contention of the applicant relating to the provisions of the 1995 Act, we do not find anything in the instant case which could be considered to be contravention of the provisions of the Act. As already mentioned, the applicant has already been given the higher pay scale of. Rs.1640-2900 and in due course of time, he would get a still higher grade. Therefore, the question of denial of promotion to the applicant on the ground of his disability does not arise.

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11. The applicant's further contention that the judgment of the Tribunal in the OA filed by him earlier, being OA No.1820/87, has not been implemented by the respondents is equally devoid of force. That OA was disposed of with a direction to the respondents to appoint the applicant against a regular group 'C' post provided the same is available and the applicant would be able to man it. It was however mentioned, while passing, that the respondents may take into consideration the fact that the applicant is already performing duties in the Complaint Cell which are ordinarily performed by a group 'C' employee. The respondents have stated that the duties performed by the applicant are normally performed by an educated mate or tradesman and not by a Junior Engineer or a Superintendent (B/R) grade II.

12. Having considered the rival contentions made and for the reasons already mentioned herein-above we dispose of this OA with the following directions to the respondents:-

(a) The respondents shall consider the applicant's case for giving him the higher grade of Rs.2000-3500 (as now revised) in terms of the Government notification dated 22.3.91 as the applicant seems to have already completed 15 years of service envisaged under the said notification.

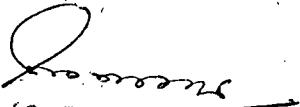
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(b) The respondents shall also consider redesignating the applicant as Incharge Complaint Cell or some similar designation in place of "Cane Weaver" though on condition that till a suitable group 'C' post which can be manned by the applicant becomes available the post held by the applicant shall be in group 'D'.

(c) The above direction shall be implemented within a period of 4 months from the date of receipt of a copy of this judgment.

There shall be no order as to costs.


(S.P. Biswas)

Member (A)

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(T.N. Bhat)

Member (J)

30.6.1998