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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JABALPUR

Original Application No. 321 of 2005

Jabalpur, this the 4th day of October 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Mr. A.K. Gaur, Judicial Member

G.K. Nair,
S/o. Late Shri R.K. Nair,
Aged about 59 years,
R/o. Sector-1, VFJ Estate,
Vehicle Factory, Jabalpur.

..... Applicant

(By Advocate – Shri V. Tripathi)

V e r s u s

1. Union of India,
Through its Secretary,
Ministry of Defence,
New Delhi.
2. The Chairman,
Ordnance Factory Board,
10-A, SK Bose Marg,
Kolkata.
3. The General Manager,
Vehicle Factory, Jabalpur.

..... Respondents

(By Advocate – Shri P. Shankaran)

O R D E R

By A.K. Gaur, Judicial Member –

In the aforesaid Original Application the applicant has prayed for the following main reliefs:

“(ii) Set aside the impugned order dated 4.2.2005 Annexure A-1,

(iii) Direct the respondents to provide pay scale of Rs. 5000-8000/- to the applicant under ACP Scheme w.e.f. 9.8.1999 with all consequential benefits,

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(iv) Direct the respondents to pay the interest 18% on the amount of arrears till the date of payment."

2. This is the fourth round of litigation. The applicant was initially appointed in the Army Medical Corps as Nursing Assistant on 30.8.1965. The applicant was a Group-C post holder and became Operation Room Assistant after 2 years of service. He retired from Army service on 30.6.1982. The applicant has already rendered more than 16 years 278 days of service in Army. On 11.6.1983 the applicant was appointed as Operation Room Assistant in the pay scale of Rs. 260-400/- in the Vehicle Factory, Jabalpur against an ex-serviceman quota. It is urged on behalf of the applicant that the respondent No. 1 has framed time bound promotion scheme which is known as ACP scheme. According to this scheme an employee gets first promotion after completion of 12 years service and second promotion after completion 24 years of service. It has been contended on behalf of the applicant that he has already completed 12 years of service in Vehicle Factory, Jabalpur on 12.6.1995 and as per ACP scheme he is entitled to get first promotion/upgradation with effect from 9.8.1999. The applicant was accordingly given the pay scale of Rs. 4500-7000/- under ACP scheme with effect from 9.8.1999. The main grievance of the applicant is that under the ACP scheme he is entitled to get the pay scale of next promotional post. Since the next promotional post of Operation Room Assistant is Operation Room Technician in the pay scale of Rs. 1350-2200/- (pre-revised), the applicant is entitled to get revised pay scale of Operation Room Technician of Rs. 5000-8000/-. As per the notification issued by the Ministry of Finance (Department of Expenditure), dated 30.9.1997, the Central Civil Services (Revised Pay) Rules, 1997 was notified. As per the said notification the pay scale of the post mentioned in Part-I, Part-B, Part-C of 1st schedule was revised with effect from 1.1.1996. As per Part-B of 1st schedule the post of Operation Theatre Technical Staff was revised from Rs. 1200-2040/- to Rs. 5000-8000/-. Copy of

the relevant portion of Part-B of 1st Schedule of the notification dated 30.9.1997 has been annexed as Annexure A-2. It is submitted on behalf of the applicant that when he was not upgraded/promoted under the ACP scheme in the pay scale of Rs. 5000-8000/- he preferred representation to the respondents. When no heed was paid to the said representation of the applicant, he filed OA No. 483/2001. The said OA was finally decided on 5.10.2001 directing the applicant to file fresh representation to the respondent No. 2 with a copy thereof to the respondent No. 3 along with copy of the order of the Tribunal dated 5.10.2001 within a period of 10 days by speed post. The respondents were directed to dispose of the representation of the applicant by passing a speaking and reasoned order within a period of two months. The applicant immediately preferred representation after receiving the order of the Tribunal dated 5.10.2001. The said representation of the applicant was rejected by respondent No. 2 vide order dated 24.12.2001 (Annexure A-4). In the order of rejection of the representation of the applicant it has been mentioned that the applicant does not possess the requisite qualification for the post of Operation Room Technician and therefore cannot be given the pay scale of Rs. 5000-8000/-. It is alleged on behalf of the applicant that the observation of the respondents in order dated 24.12.2001 is factually incorrect. In fact as per the SRO 130-E the applicant has requisite qualification (Annexure A-5). The Ministry of Personnel and Public Grievance Department (Department of Personal & Training) has issued a notification dated 12.2.1996, wherein the following has been mentioned in para 2(a):

“(a) For appointment to any reserved vacancy in Group-C posts, a matriculate ex-serviceman (which term includes an ex-serviceman who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force) who has put in not less than 15 years of service in the Armed Forces of the Union may be considered eligible for appointment to the posts for which the essential education qualification prescribed is graduation and where,

(b) work experience of technical or professional nature is not essential."

2.1 According to the aforesaid rules the matriculate ex-serviceman who has put in 15 years of service in the armed forces of the Union is considered eligible for appointment to the post for which the essential educational qualification is prescribed as graduation. In this situation the applicant was entitled to be promoted as Operation Room Technician in the pay scale of Rs. 5000-8000/-. Against the order dated 24.12.2001 the applicant filed another OA No. 169/2002 which was ~~financially~~ decided on 3.9.2004 with direction to consider the case of the applicant for grant of pay scale of Rs. 5000-8000/- under ACP scheme within a period of 3 months. The applicant also filed a contempt petition No. 17/2005 which was rejected by this Tribunal (Annexure A-7). The validity of the order dated 4.2.2005 passed by the respondents has been assailed before this Tribunal merely on the ground that as per the SRO 13(E) and the notification issued by the DOP&T dated 12.2.1986 the applicant is having all eligibility and qualification for the post of Operation Room Technician. Therefore, he is entitled to get the pay scale of Rs. 5000-8000/- attached to the post.

3. The respondents have filed their reply contesting the claim of the applicant. They have submitted that the applicant was granted first ACP benefit from 9.8.1999 by placing him in the next higher post of Operation Room Technician in the pay scale of Rs. 1350-2200/- which was revised to Rs. 4500-7000/-. The revised pay scale of Operation Room Technician in the pay scale of Rs. 5000-8000/- is applicable only to those who have the prescribed qualification of B.Sc plus Diploma/certificate in the relevant subject as recommended by the Vth CPC. The existing incumbents in the grade was placed in appropriate matching scale and since the applicant was recruited as Operation Room Assistant with the requisite qualification of Matriculation with 3 years work experience as per ^{the} then recruitment

rules, the higher pay scale of Rs. 5000-8000/- was not granted to him. The higher pay scale has been prescribed only to those who have been recruited in the grade of Operation Room Technician with BSc Degree plus Diploma/certificate in the relevant field. Others who do not have this qualification i.e. the existing incumbents will be automatically placed in the replacement scale of pay Rs. 4500-7000/-. The applicant is not a direct recruit in ORT with the above qualification. Operation Room Technician in the organization was in the pay scale of Rs. 1350-2200/- and the same was replaced by the revised matching pay scale of Rs. 4500-7000/- and with higher scale of Rs. 5000-8000/-. Therefore, the applicant was rightly placed in the next matching scale of Rs. 4500-7000/-. Further the respondents has also stated that the SRO published in 1989 according to which the pay scale given to Operation Room Technician is Rs. 1350-2200/-. The essential qualification is matriculation or equivalent with 3 years work experience. Based on this the applicant has already got the benefit of higher pay scale as the pay scale of Rs. 1350-2200/- has been replaced by pay scale of Rs. 4500-7000/- based on the recommendation of 5th CPC. The pay scale of Rs. 5000-8000/- has been prescribed to only those who have higher qualification of BSc plus Diploma/certificate in the relevant subject. The higher pay scale was proposed by the Vth CPC subject to implementation of the revised qualification norms. This aspect was also made clear in the notification SRO No. 18/E dated 9th October, 1997 vide which the recommendation of the Vth CPC were implemented. In part B of the first schedule of the notification, it has been clarified that in cases where there are certain conditions prescribed by the Pay Commission as pre-requisite for grant of higher scale, it would be necessary for the Ministry of Defence not only to accept these pre-conditions but also to implement them before the scales are applied. The Operation Room Technicians in Ordnance Factory Organization has been placed in the pay scale of Rs. 4500-7000/- in view of the recruitment qualification prescribed for the post i.e. matriculation with 3 years experience as per SRO 13/E/1989.

There is only one post of Operation Room Technician in the entire organization and the prescribed qualification for this post was Matric with experience. Therefore, the pay scale of Rs. 1350-2200/- was replaced with matching scale of Rs. 4500-7000/- from 1.1.1996. Since, there is only one post authorized in the entire organization, in the revised recruitment rules, it was proposed to fill up this post by promotion with linkage of qualification. The respondents have not disputed the fact that under the provisions of para 2(a) of Ministry of Personnel, Public Grievances and Pensions, DOPT OM dated 12.2.1986, the applicant fulfills the criteria of possessing matching qualification equivalent to BSc. Degree. But merely on this ground alone, the higher scale cannot be conferred to the applicant unless the grade in the organization is available with stipulation of higher qualification and in the higher scale. Therefore, the applicant is not entitled to any better pay scale than what has been granted to him on first ACP.

4. By filing rejoinder reply the pleas advanced in the reply were denied by the applicant but no specific reply has been offered by the applicant with regard to the averments contained in paragraph 5.7 and 5.10 of the counter reply filed by the respondents.

5. We have heard Shri V. Tripathi, counsel for the applicant and Shri P. Shankaran counsel for the respondents.

6. In our considered opinion, as per the judgment of the Hon'ble Supreme Court in T.P. Kumaran - 1997 SCC (L&S) 135 the present Original Application is barred by the principle of order rule 2 of CPC and by the doctrine of constructive res-judicata. The applicant has claimed almost similar relief in OA No. 169/2002 decided on 3.9.2004 and in OA No. 483/2001 decided on 5.10.2001. In OA No. 169/2002 the relief (a) was to direct the respondents to grant the applicant next higher grade i.e. of Operation Theatre Assistant in Rs. 5000-8000/- and in OA No. 483/2001 was to direct the respondents to

grant him the pay scale of Rs. 5000-8000/- under ACP scheme as the same is the next higher grade of Operation Theatre Assistant. Since in all the OAs, including the present one, the relief claimed is similar and identical, hence, the principle of order, ^{two} rule 2 of CPC and doctrine of constructive res-judicata, ~~falls~~ ^{are applicable}. On merits also it is seen that the applicant an ex-serviceman was appointed as Operation Room Attendant at Vehicle Factory, Jabalpur against the ex-serviceman quota with effect from 11.6.1983. Since he did not get any promotion from the date of his appointment, he became eligible for financial up-gradation under ACP scheme after completion of 12 years of service. The Operation Room Technicians were in the pay scale of Rs. 1350-2200 before the implementation and recommendations of the 5th Central Pay Commission. As per the Vth CPC recommendation and subsequent notification of Ministry of Defence vide SRO 14-E, dated 9.10.1997 the scale of Rs. 4500-7000/- has been given as replacement scale of Rs. 1350-2200/-. It is note worthy to mention here that the 5th Central Pay Commission in its recommendation has recommended the pay scale of Rs. 5000-8000/- to the Operation Room Technician with minimum BSc plus diploma certificate in the relevant subject. The applicant does not possess the prescribed qualification. He merely fulfils the criteria for up-gradation in the pay scale of Operation Room Technician as per SRO and that is why he has been given the pay scale of Rs. 4500-7000/-. Since the applicant is lacking in qualification he is not entitled to get the scale of Rs. 5000-8000. The pay scale of Rs. 5000-8000/- has been prescribed to only those holding diploma in the relevant subject. In view of our aforesaid observation we are firmly of the view that the benefit cannot be extended to the applicant until and unless he fulfils the conditions prescribed for such benefit. The applicant has failed to make out any case for grant of the pay scale of Rs. 5000-8000/-.

7. In view of the aforesaid, we do not find any merit in this Original Application and the same is accordingly, dismissed. No costs.

A.K. Gaur
(A.K. Gaur)
Judicial Member

Dr. G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

"SA"

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि -

- (1) सचिव, जिलापुर
- (2) आवेदक, के काउंसल
- (3) प्रत्यर्पी श्री/श्रीमती, के काउंसल
- (4) बांधपाल, के.ए.ए. ज. बांधपाल

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Issued
on 6/10/00

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