

1

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 422 of 2005

Jabalpur this the 8th day of September, 2006.

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

K.P.S. Suresh, Aged 43 years, Training Officer
(Electronics) R/o No.69, CPWD Belloria Colony,
Navlaskha, Indore-452011,

-Applicant

(By Advocate – Applicant in person)

VERSUS

Union of India & Ors.
Represented by

1. The Addl. Secretary & Development Commissioner,
Ministry of Small Scale Industries, Nirman Bhavan, New
Delhi-110011

2. The Director General of Employment & Trg., Ministry
of Labour – D.G.E.& T, Shram Shakti Bhavan, New
Delhi-110 001

-Respondents

(By Advocate – Shri Umesh Gajankush)

ORDER

By Dr.G.C.Srivastava,VC.-

Through this Original Application, the applicant has prayed
for the following relief :-

“(1) Order the I-respondent to grant retrospective effect for
the revision of scale of pay of SIPOs from 5500-9000 to
6500-10500 (pre-revised scale of pay of Rs.1640-2900 to
2000-3500) with all consequential benefits as per the rules,
from the date of applicant's joining as SIPO (Electronics),
i.e.29-04-1991.

G

(2) Order the retention of lien to the post of Assistant Director Gr-II (redesignated) for repatriation to the parent department as the borrowing department of D.G.E.&T, Ministry of Labour has failed to confirm the applicant to his new post as Training Officer (Electronics) even after 7 ½ years of regular service”.

2. The facts of the case are that the applicant was initially appointed as Small Industry Promotion Officer (for short 'SIPO') (Electronics) in the pay scale of Rs.1600-2900 with effect from 29-04-1991 on the recommendations of the Union Public Service Commission (for short 'UPSC'), but in July 1997, he was selected again through UPSC for appointment to the post of Training Officer in the Directorate General of Employment & Training (for short 'DGET'), Ministry of Labour. Consequent on the receipt of offer of appointment from DGET, the applicant resigned from the post of SIPO (Electronics). After his resignation was accepted and he was relieved on 27.8.1997, he joined the new organization as Training Officer. Prior to his relief, he was confirmed on the post of SIPO (Electronics) with effect from 29.4.1993, as a result of which the earlier order, by which his resignation was accepted, was superseded and a fresh order allowing him to retain lien for a period of two years was issued. This lien was further extended up to 6.8.2000. Thereafter, at the request of the applicant himself vide annexure R-II, his lien on the post of SIPO (Electronics) was terminated with effect from 27.8.2000 and he was allowed to continue in his new organization, vide order dated 23.11.2000 (annexure R/III). Meanwhile, consequent to the implementation of the recommendations of the 5th Central Pay Commission (for short 'CPC') the pay scale of SIPO's in 13 technical trades including electronics was revised to Rs.5500-9000, but SIPO(Statistics) was given the higher replacement pay scale of Rs.6500-10500 on the ground that appointment in this post required post-graduate qualification. Subsequently, the Government of India, also

Gh

considered revision of the pay scale of SIPOs in 13 technical trades and upgraded these posts also to the pay scale of Rs.6500-10500 and designated them as Assistant Director (Grade-II) with effect from 17.7.2004 after new recruitment rules were framed and came into force. As per the new recruitment rules, the minimum qualification prescribed for these posts was also revised to post-graduate in engineering in the relevant discipline (except electronics) with two years of experience. The minimum prescribed qualification pertaining to Electronics was left unaltered while framing the new recruitment rules as originally also for SIPO (Electronics) the minimum prescribed qualification was post-graduate in electronics engineering with two years of experience. The prayer of the applicant is that since upgradation of the post of SIPOs was done because of change in the eligibility criteria and since there was no such change in the eligibility criteria for electronics discipline for SIPO(Electronics), he is entitled to the higher scale of pay of Rs.6500-10500 or its equivalent right from the date of his appointment i.e. 29.4.1991 or at least from 1.1.1996 when the recommendations of the 5th CPC were implemented. The applicant has also prayed that he should be brought back to the re-designated post of Assistant Director (Grade-II) in his parent department as his new department has failed to confirm him in his new post of Training Officer even after 7 ½ years of regular service.

3. Opposing the prayer of the applicant, the respondents have stated in their return that the applicant's lien in his parent department was terminated at his own request. Hence, there is no question of taking him back. Further, the applicant's new organization has given a commitment in writing (annexure R/4) that necessary action for confirmation of the applicant is under process. Regarding giving retrospective effect to the upgraded



scale, the respondents have averred that the posts of SIPO in 13 trades were upgraded to that of Assistant Director (Grade-II) by merging the post of SIPO and Assistant Director (Grade-II) for the sake of uniformity in eligibility criteria and pay scales. The disparity between SIPOs in electronics and statistics vis-à-vis other SIPOs justified this upgradation.

4. In his rejoinder, the applicant submitted that since this disparity existed right from 1.1.1996, when the 5th CPC's recommendation giving higher replacement scale of Rs.6500-10,500 for SIPO (statistics) was implemented, it would be just and proper to award this scale to SIPO (Electronics) also right from 1.1.1996; more so, because the qualifications and eligibility criteria, existing at that time, have remained unchanged. It was further submitted by the applicant that as per the old recruitment rules, SIPO (Electronics) became eligible for promotion directly to the post of Assistant Director Grade-I in 8 years, whereas the qualifying service for any other SIPO for promotion to this level was three years as SIPO and 5 years as Assistant Director (Grade-II). This shows that SIPO (Electronics) was equivalent to Assistant Director (Grade-II) in other disciplines. On this ground also higher pay scale of Rs.6500-10500 is justified.

5. We have heard the arguments advanced by the counsel for both sides and have also gone through their pleadings.

6. On factual position, there is no controversy. Undisputedly, the post of SIPO (Electronics) when upgraded to that of Assistant Director (Grade-II) did not need any amendment in the eligibility criteria unlike other posts of SIPO. But, it is an established principle that it is not for the courts to fix pay scales. Expert bodies like pay commission are required to look into pay scales (see :

Gr

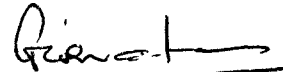
State of West Bengal and others Vs. Hari Narayan Bhowal and others (1994) 27 ATC 524 (SC). It has been mentioned by the applicant himself, in paragraph 4.5 of the OA, that the 5th CPC has stressed the underlying principle of higher pay of Rs.2000-3500 (replacement scale Rs.6500-10500) to engineering graduates. At the same time, it is also an admitted fact that based on the nature of duties, the 5th CPC did not recommend this replacement scale for SIPO (Electronics) w.e.f. 1.1.1996. However, despite the 5th CPC not recommending a higher replacement pay scale for SIPO (Electronics), the administration did realize the necessity to examine the question whether all the posts of SIPOs, which appeared to be similar in duties should carry equal pay on the principle of equal pay for equal work, as stressed by the learned counsel for the applicant in his argument. The Government did examine the issue of disparity, even after the recommendations of the 5th CPC were implemented. As a result of this review, the posts of SIPO in 13 trades were upgraded to that of Assistant Director Grade-II with higher pay scale. The courts are normally required to accept the recommendations of expert bodies. We are, therefore, not inclined to interfere with the recommendations of the pay commission in regard to replacement scale for the post of SIPO (Electronics) with effect from 1.1.1996. On similar grounds, we are also not inclined to interfere with the decision of the Government to upgrade this post along with other SIPOs as Assistant Director Grade-II with effect from 17.7.2004. Further, since the lien of the applicant was terminated at his own request when the department was willing to bring him back, as is clear from order dated 8.8.2000 (annexure R/1), the applicant has failed to make out any case for our interference with regard to the decision regarding termination of his lien. Consequently, he is not entitled to get any relief from us in respect of his prayer for repatriation to his original parent department.



6

7. In the result, we find that the OA is devoid of merits and is liable to be dismissed. Accordingly, it is dismissed with no order as to costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

rkv

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

प तिलिपि अचो धित :-

- (1) सचिव, उच्च न्यायालय दार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के कर्मचारी
- (3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल
- (4) मध्यपाल, के.प्र.अ., जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यपत्रों के
उप रजिस्ट्रार

K.P.S. Suresh
Amjw
U. Gajankush
BDr Amjw

Idhms
on 12.9.02
Bz