

Prem Kumar Vs. Union of India and anr.

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Court : Delhi

Decided On : Mar-03-2014

Judge : Rajiv Shakdher

Appellant : Prem Kumar

Respondent : Union of India and anr.

Judgement :

* THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on:

10. 02.2014 Judgment delivered on:

03. 03.2014 % + WP(C) 1142/2001 PREM KUMARPETITIONER VERSUS UNION OF INDIA AND ANR.RESPONDENTS ADVOCATES WHO APPEARED IN THIS CASE: For the Petitioner : Ms. Ashly Cherian, Advocate For the Respondents : Mr. Upender Thakur, Mr. Sumeet Bhatia and Mr. Tejveer Singh Bhatia, Advocates CORAM :HON'BLE MR JUSTICE RAJIV SHAKDHER RAJIV SHAKDHER, J1 The petitioner seeks two substantive prayers. (i) First, that communication dated 02.02.2001, issued by respondent no.2 i.e., Indian Institute of Technology, Delhi (hereinafter referred to as I.I.T) calling upon the petitioner to appear for test and interview for the post of UDC (SG), in the pay scale of Rs.1400-2600, be quashed. This prayer is sought on the ground that the petitioner was already holding a pari materia post of Assistant (Accounts), which was, carrying a higher pay scale of Rs.16402900. (ii) Second, that a direction to be

issued to respondent no.2 to consider the case of the petitioner for selection to the post of Accountant / Superintendent, in the pay scale of Rs.2000-3200 (pre-revised) or, to such other similar post or designation, in consonance with, the provisions of Recruitment and Career Development Scheme for Non-Academic (Group B, C & D) Staff (in short R & CD Scheme) or any other circular, notification or office orders, etc. issued by I.I.T. in that behalf. 1.1 In support of the aforementioned substantive prayers, a tertiary prayers have been sought in the form of issuance of directions to the respondents to produce relevant rules, and policy under which the petitioner was appointed and promoted in the I.I.T. A further prayer in the form of explanation is also sought as to why the petitioner was issued the communication dated 02.02.2001, to take the written test and interview for the post of UDC (SG) in pay scale of Rs. 1400-2600 (pre-revised) when petitioner was already placed in a higher pay scale of Rs. 1640-2900 (pre-revised) with effect from 08.05.1992. 1.2 I may only indicate that this court, in its order dated 06.02.2002, has recorded that, the petitioner, was unwilling to take the test and interview (presumably for the post of UDC (SG), and therefore, prayer for interim relief, was rejected.

2. In order to appreciate the challenge laid by the petitioner, it would be necessary to detail out the broad contours of the case :2.1 The petitioner, was recruited to the post of Junior Cashier, on 31.08.1981, after clearing an interview held, in that behalf. The petitioner, was offered a pay scale of: Rs.330-560. The petitioner, was directed to report for duty, immediately and, in any case, not later than 15.09.1981. The appointment though, was made on temporary basis. Upon completion of probation, the petitioner was confirmed vide Memorandum dated 08.12.1982. The period between which, the petitioner, was on probation, was made substantive w.e.f. 25.09.1982. 2.2 Evidently, in 1983, I.I.T came out with an advertisement for the post of UDC. The petitioner, was selected and, thereupon, appointed in the said post, in the pay scale of Rs.330-560; on 01.06.1983. To be noted, this pay scale was the same as that of Junior Cashier; a post which the petitioner already held. Notably, in the panel drawn up by I.I.T for the post of UDC, the petitioner was placed at serial no.3, while one Mr Jagtar Singh was placed at serial no.7. 2.3 The petitioner, realizing that the pay scales in the post of Junior Cashier and the UDC were the same, vide communication dated 01.05.1984 he wrote to the Registrar,

I.I.T., that the period during which he had worked as Junior Cashier, be treated as period spent by him in service, in the post of UDC, for the purposes of future promotion. Specifically, the request made was that, period commencing from 25.09.1981 should be included as service, in the post of UDC. The petitioner, indicated that, till consideration of his request; albeit on sympathetic basis, he should not be confirmed in the post of UDC. Pertinently, respondent no.2 did not pay heed to this communication. 2.4 On 23.08.1984, the petitioner, having successfully completed his probation in the post of UDC was made substantive w.e.f. 01.06.1984. Notably, the period of probation in the post of UDC, commenced from 01.06.1983. 2.5 The petitioner, thereafter, on 12.09.1991, applied for the post of Assistant (Accounts). The petitioner, having cleared the interview, was offered the post of Assistant (Accounts) in the pay scale of Rs.1400 -2600. Once again, the petitioner was put on probation for a period of one year subject to it being extended. His pay was fixed at Rs.1480/- p.m. 2.6 After completion of probation, the petitioner was made substantive in the post of Assistant (Accounts) w.e.f. 08.05.1993 vide Memorandum dated 28.06.1993. The period of probation, as indicated in the said memorandum, commenced from 11.05.1992. 2.7 It may be relevant to note here; a fact which is not disputed before me by the respondents, that there was a promotion policy in place since 1978, that is, before the petitioner joined respondent no.2s service as Junior Cashier, in August, 1981; which ceased to exist with effect from 13.09.1986. 2.8 Consequently, on 06.12.1994, the R & CD Scheme, was notified. The notification indicated that it would be notionally implemented w.e.f. 01.04.1993, and financial benefits, under it, would be extended from 01.04.1994. With the notification of R & CD Scheme, all earlier guidelines for internal / external selection, stood superseded. 2.9 The R & CD Scheme was thus, brought into force to provide appropriate and adequate opportunity for vertical mobility, consistent with job requirement.

3. The R & CD Scheme indicated that the entire non-academic staff of the I.I.Ts, which included I.I.T of Delhi, had been categorized under four Groups : A, B, C and D. The R & CD Scheme, however, applied only to the staff, which fell in Group B, C & D. 3.1 The broad classification of staff under the R & CD Scheme had been made on the basis of job responsibilities as well as qualification-compatible

cadres. Therefore, while the group was a genus (which comprised of number of cadres, being species of the genus), the group, was defined as Conglomeration of different posts identified, as such, on the basis of scales-of-pay. Each cadre under the R & CD Scheme was thus provided a ladder of three levels; except for Group D, which pertained to unskilled persons, where four levels were provided. 3.2 It appears that the Board of Governors of I.I.T., on 26.10.1999, resolved to notionally implement the provisions of the R & CD Scheme with effect from 13.09.1986; though financial benefits, as indicated earlier, were to flow from 01.04.1994. At this stage, a tentative list of employees in various non-ministerial posts, who were eligible for selection, with the tentative dates indicated therein, was appended by way of annexure to the said Resolution. In the Annexure, the details with regard to the petitioner and one, Mr. Jagtar Singh, were shown as follows:

TENTATIVE LIST (UDC) S.No.Emp. Code Name S/Sh./Ms. Deptt. xx 18 xx 25372
xx Jagtar Singh xx L/Cell Tentative eligible date for selection to the post of UDC
(SG) (Rs.1400-2600) (pre-revised) xx 01.06.1991 xx 21 xx 25369 xx Prem Kumar
xx Accts. xx 01.06.1991 WP(C) 1142/2001 Apptd as Asstt. W.e.f. 06.07.92. Apptd
as (Accts.) Asstt. w.e.f. 3.3 Having regard to the above, the petitioner made a
representation to the concerned officer of I.I.T., on 04.11.1999. In sum, the
petitioner, requested that he be given the promotion to the post of Assistant /
Assistant (Cash) with effect from 25.09.1989 and, not from, 01.06.1991. This plea
was made on the premise that his services as Junior Cashier, would be counted.
Having entered the service in September, 1981 (i.e., the month and the year when
the probation began), the qualifying, eligibility period service of eight years, would
get completed in September, 1989; therefore, the demand for promotion from
25.09.1989. A case was also sought to be made out that if, the first part were to be
accepted, then, the petitioners next promotion would be due from 25.09.1997, in
the post of Superintendent / Assistant (Cash SG). 3.4 Having not received a
response to his aforementioned communication, the petitioner sent reminders on
30.03.2000 and 27.12.2000. 3.5 Yet another communication was sent on
11.01.2001, wherein the same request was reiterated. Promotion to the post of
Assistant (Accounts) / Assistant (Cash) was sought w.e.f. 25.09.1989. 3.6 The
petitioner, emphasized the point that the R & CD Scheme had been made
effective notionally from 13.09.1986, to give promotions, when no promotional

scheme was in place. He emphasized the point that, it is for this reason that the petitioner had taken recourse to the open selection route, brought into play by the I.I.T. He, thus, requested that the result of the test / interview for the post of Assistant (Accounts), in which, he got selected (and consequently appointed on 08.05.1992), should be considered for treating him as an appointee to the post of Assistant / Assistant (Cash) / Assistant (Accountant) w.e.f. 25.09.1989 and, not from, 01.06.1991 and, that too, in the post of UDC (SG). 3.7 Evidently, vide communication dated 17.01.2001, I.I.T. rejected the petitioners representation dated 11.01.2001 and, advised him, to appear for the test and interview fixed for 18th and 22nd January, 2001, respectively. In this communication, reference was also made to an earlier reply, evidently, issued by I.I.T., on 16.01.2001. 3.8 The petitioner, however, refers to office order dated 22.12.2000 to contend that selection of eligible employees under the R & CD Scheme was notionally ante-dated w.e.f. 13.09.1986, though financial benefits were given from 01.04.1994. This ante-dating of selection, according to the petitioner, was carried out in respect of those employees who had been selected through open selection to the higher post in the same cadre, to which, they were eligible under the said scheme from an earlier date. The details, with regard to Mr. Jagtar Singh, and one other person, whose name has been shown as, Mr Sunil Kumar Verma, are as follows:

INDIAN INSTITUTE OF TECHNOLOGY : DELHI HAUZ KHAS: NEW DELHI - 110
016 TD/Estt-II/2000/6729 Dated :

22. 12-2000 OFFICE

ORDER

Sub: Ante-dating the selection of the eligible employees under R&CD Scheme notionally w.e.f. 13.09.1986 and financial benefits from 01.04.1994 in respect of those employees who got selected through open selection to the higher post in the same cadre to which they are eligible under the Scheme from an earlier date. S.No.Name & E/Code WP(C) 1142/2001 Deptt. Selected Post & Antedated Scale w.e.f.

1. xxx xxx xxx xxx xxx 21. Jagtar Singh 25372 (appointed as Asstt. W.e.f. 06.07.92 (AN) Legal UDC (SG) Rs.1400-2600 (PR) Rs.5000-8000(R) 01.06.1991 xxx xxx

F.B. w. e. f. 01.04.1994 Assistant *Rs.1640-2900 (PR) *Rs.5500-9000(R) *Pay Scale / Pay subject to the Appeal made by MHRD22 Sunil Kumar Verma, 25377 (appointed as Asstt. W.e.f. 06.07.92 (AN) E-1 UDC (SG) Rs.1400-2600 (PR) Rs.5000-8000(R) Assistant *Rs.1640-2900 (PR) *Rs.5500-9000(R) 3.9 01.07.1991 Rs.1480/- (01/07/91) Rs.1520/- (01/07/92) *Rs.1640/- (07.07.92) Rs.1700/- (01/07/93) Rs.1760/- (01/07/94) Rs.1820/- + 60 PP (01/07/95) Based on the examples of Mr. Jagtar Singh and Mr. Sunil Kumar Verma, who were appointed as Assistants w.e.f. 06.07.1992 and, whose, selection was ante-dated from 01.06.1991 and 01.07.1991, respectively, it was contended that the petitioners selection to the post of Assistant / Assistant (Cash) / Assistant (Accountant), should be given effect from 25.09.1989. 3.10 To be noted, in the office order of 22.12.2000, the petitioners name was not included. This was also repeated in the tentative list dated 19.01.2001, issued by respondent no.2, in respect of the employees, eligible for selection upto 30.04.1998.

4. It is around this time, that is, on 02.02.2001, that the petitioner received the impugned communication calling upon him to appear in the test / interview to be held on 18th and 22nd January, 2001 respectively, under the R & CD Scheme for the purpose of ante-dating his selection under the provisions of the said scheme w.e.f. 13.09.1986. 4.1 The impugned communication clearly indicated that the petitioner had been appointed to the post of UDC, on 01.06.1983, in the pay scale of Rs.330-560 and, thereafter, was appointed as Assistant (Accounts) through an open selection in the pay scale of Rs.1400-2600, w.e.f. 08.05.1992. Having completed eight years as UDC (since he was eligible for section as UDC (SG) in the pay scale of Rs.1400-2600 w.e.f. 01.06.1991), he had been asked to appear in the test / interview for the post of UDC (SG). 4.2 The impugned order also noted that since, the petitioner, had got appointed as Assistant (Cash) / Assistant (Accounts), his cadre and line of promotion, had changed. The ladder of selection for the two cadres under the R & CD Scheme were indicated, which for the purposes of convenience are extracted hereinbelow :Group C LDC Group C/B UDC (Cash) 4.3 UDC Asstt. (Cash) UDC (SG) Asstt. (Cash)(SG) In nutshell, the petitioner was told that if he, was desirous of ante- dating his selection to the post of UDC (SG), under the R & CD Scheme w.e.f. 01.06.1991, he would have to take the test. 4.4 The petitioner, being aggrieved, challenged the impugned

communication dated 02.02.2001 by way of instant writ petition. Notice in the petition was issued on 20.02.2001. As noted hereinabove, interim relief was denied to the petitioner for the reason he chose not to take the test though, by virtue of the impugned order, he had been given an opportunity to that effect. It also appears upon a reading of this Courts order dated 06.02.2002, that respondent no.2 was perhaps willing to give the petitioner another opportunity, which of course, the petitioner, declined. 4.5. Upon issuance of notice, pleadings in the matter were completed. SUBMISSIONS OF COUNSELS Ms. Cherian has argued for the petitioner, while on behalf of respondent no.2 arguments addressed by Mr. Bhatia. 5.1 In brief, the argument of Ms. Cherian was that the petitioner should have got benefit of the service put in as Junior Cashier. The learned counsel submitted that if period was counted, the petitioner would have got his first promotion w.e.f. 25.09.1989 and, the second promotion, w.e.f. 25.09.1997. 5.2 Ms. Cherian relied upon a memorandum dated 30/31.05.1975 to contend that the service put in as Junior Cashier could be combined with that, which was put in by the petitioner, as UDC. Only to be noted, the said memorandum, refers to Junior Staff Recruitment and Promotion Rules, 1972 (in short the 1972 Rules), the provisions in respect of which, were not placed before me. 5.3 The other argument of Ms. Cherian was that Mr. Jagtar Singh vide office order dated 22.12.2000, had his selection ante-dated w.e.f. 01.06.1991; a dispensation which was not extended to the petitioner. It was contended that Mr. Jagtar Singh was junior to the petitioner in the panel drawn up for UDC and, therefore, the petitioners first promotion should be ante-dated to 25.09.1989.

6. On behalf of respondent no.2, it was contended that the petitioner had changed his cadre twice over. Firstly, when he applied and was selected as UDC in 1983 and, thereafter, as Assistant (Accounts), in 1992. It was thus contended, that the, petitioner having changed his cadre could not have availed of the period of service put in as Junior Cashier. It was argued that if, the petitioner, was desirous of having his selection ante-dated w.e.f. 01.06.1991 as UDC (SG), he was required to take the test and interview, as was indicated in the impugned order dated 02.02.2001. 6.1 In so far as the argument of the petitioner with regard to ante-dating of selection was concerned, reliance was sought to be placed on the resolution dated 19.05.2000, which formed the basis of the office order dated

22.12.2000. It was submitted that the Board of Governors, at their meeting held on 19.05.2000, directed constitution of a committee by the Director of respondent no.2, to look into the issues, arising from implementation of the R & CD Scheme, notionally, w.e.f. 13.09.1986. 6.2 In respect of this specific issue, my attention was drawn to the recommendations of the Committee, the relevant extract of which reads as follows:

..The Committee after taking into account the above facts and all other relevant factors recommends that no fresh test / interview be held for such employees who through open selection got selected to the same higher post in the same cadre to which they are now eligible under the R&CDS from an earlier date. In all such cases the marks obtained by them in the open selection in Test & Interview be extrapolated to the marking Scheme of the R&CDS and results prepared to see if they fulfil the criteria of selection under the Scheme, i.e., at least 50% in test and 60% in aggregate. All those who qualify should be ante-dated and the remaining be given an opportunity to take the selection process in terms of paras IV & V of the R&CD Scheme. It is further recommended that they should continue to draw the financial benefits w.e.f. the date of their selection to their post through open selection without taking into account the notional increments that they may be entitled to as a result of ante-dating. The financial benefit of notional increments as a result of ante-dating be given w.e.f. 01.04.1994 only..

6.3 It was submitted on behalf of respondent no.2 that since Mr. Jagtar Singh had fulfilled eligibility criteria in terms of the Board of Governors Resolution dated 19.05.2000, he was given notional promotion w.e.f. 01.06.1991, whereas the petitioner, was denied the said notional ante-dating as he had not scored 50% in the written examination and 60% in the aggregate, in terms of the decision of the Committee. 6.4 I must say that the petitioner is, perhaps, rightly aggrieved by the fact that this aspect was not brought to fore in the counter affidavit. It is only during the course of arguments, when I called for the record, that this aspect has been brought forth on behalf of the respondents. Having said so, the record of respondent no.2 cannot be wished away. The failure on the part of the deponent of the counter affidavit filed on behalf of the I.I.T., cannot deprive it, of a legal defence, which is based on contemporaneous decision taken, which is, available

in its record. REASONS7 Having considered the arguments of both sides and perused the record, in my view, the petitioner cannot be granted any relief in the writ petition, for the following reasons :-

7.1 As correctly argued on behalf of respondent no.2, the petitioner changed his cadre twice. Once, when he got selected as UDC and, thereafter, as Assistant (Accounts). Though the petitioner made a request for recognizing service, he had put in as Junior Cashier, there was no response to the same.

7.2 I have not been shown anything by way of Rules which would have me accept the contention of the petitioner that the service of the petitioner as Junior Cashier would stand combined with the service put in as UDC.

7.3 As indicated above, the reliance on memorandum dated 30/31.05.1975 cannot help, as that memorandum was issued under the 1972 Rules; the provisions, of which, were not placed before me for due consideration.

7.4 Notably, the petitioner entered service only in August 1981 when, even according to him, a promotional policy had kicked-in, which was, formulated in 1978. A difficulty arose when the 1978 promotional policy, was brought to an end, on 13th September, 1986. It is because of this precise reason that the R & CD Scheme, which was notified in 1994, was ultimately, made notionally applicable, from 13.09.1986.

7.5 The Board of Governors of respondent no.2, having realized that there was no promotional policy, in place, between September 1986 and 06.12.1994, decided to recognize the marks obtained in the open selection by employees for the purpose of ante-dating their selection. As per the Board of Governors Resolution of 19.05.2000, the criteria fixed for antedating selection was that, the employee should have obtained at least 50% marks in the written test and 60% in the aggregate. Mr. Jagtar Singh, who was junior to the petitioner, fulfilled this criteria and, therefore, his selection was notionally ante-dated with effect from 01.06.1991. The petitioner, who did not fulfil this criteria, was denied ante-dating of his selection.

7.6. The petitioner's grievance that this fact was not brought out in the counter affidavit may have caused some heart burn but, having regard to the fact that the resolution of the Board of Governors dated 19.05.2000, is available on the record, cannot be wished away. It is for this reason that the petitioner was given an opportunity to have his say vis--vis this aspect, as well. The petitioner in his written submission does not dispute the fact that unlike Mr Jagtar Singh, he did not fulfil the eligibility criteria fixed by the Board of Governors, for ante-dating selection under the R& CD

Scheme. If that be position, petitioners selection cannot be ante-dated.

8. Therefore, having regard to the aforesaid facts, in my view, there is no merit in the writ petition, the same is accordingly dismissed. There shall, however, be no order as to costs. RAJIV SHAKDHER, J.

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