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Union of India (Uoi) Vs. Pushpa Devi

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Court : Delhi

Decided On : Mar-23-2010

Judge : Anil Kumar and; Mool Chand Garg, JJ.

Acts : Constitution of India - Article 226

Appeal No. : W.P.(C.) No. 1182/2010 and CM Nos. 2471-72 and 3711/2010

Appellant : Union of India (Uoi)

Respondent : Pushpa Devi

Advocate for Def. : None

Advocate for Pet/Ap. : V.S.R. Krishna, Adv.

Disposition : Petition dismissed

Judgement :

Mool Chand Garg, J.

1. This writ petition has been filed by the petitioners aggrieved of the order passed by the Principal Bench, Central Administrative Tribunal (hereinafter referred to as the Tribunal) in OA No. 2074/2008 on 17.08.2009, whereby directions have been given to the petitioners to place the respondent in the pay scale of Rs. 4500-7000 from the date of inception of her service as a Junior Clerk with arrears and re-

consider her out of turn promotion to a pay scale higher than the scale now being granted to her, with arrears, within a period of three months from the date of receipt of a copy of the order.

2. Briefly stating the facts giving rise to the filing of this case are that the respondent, a graduate of Delhi University as well as an athlete of International level who was recruited in Central Industrial Security Force (CISF) as Head Constable in the pay scale of Rs. 3200-4900 and on the basis of the sports achievements, was also promoted as Assistant Sub Inspector in the pay scale of Rs. 4000-6000. Pursuant to a notification issued by the Railway Board for recruitment in Group 'C' for the year 2000-2001 in sports quota, whereby the pay scale for graduate was prescribed as Rs. 4500-7000, she applied for the post of Junior Clerk, however despite her selection she was appointed as a Senior Clerk but in the pay scale of 3050-4500. At this juncture, it would be relevant to take note of the notification issued by the respondents/Railway Board for recruitment of Group 'C' post in sports criteria.

2.0 Eligibility Criteria

2.1 Citizenship: Only candidates who are citizens of India are eligible.

2.2 Minimum Educational Qualifications: Matriculation is the minimum qualification required for appointment.

2.3 Educational qualification for different pay scales: (i) Matric pass upto less than graduate for pay scale Rs. 3050-4500, (ii) Graduate or higher qualification for pay scale Rs. 4500-7000. (depending on the sports performance.)

3. A bare reading of the aforesaid criteria goes to show that if a person was graduate and was found to be successful in sports performance has to be put up in the pay scale of Rs. 4500-7000 but for a matric post up to less than graduate, pay scale prescribed was Rs. 3050-4500. However, despite that the petitioner was appointed in the pay scale of Rs. 3050-4500 by the Railway Board despite she being an athlete of National level and was not appointed in the pay scale of Rs. 4500-7000, which was the pay scale admissible to a graduate.

4. It is a matter of record that after the respondent joined the Railway Board as Junior Clerk on 10.05.2002, till 2005 on the basis of sports achievement, was granted six special increments and was also given out of turn promotion as per Railway Board's guidelines on outstanding performance as Senior Clerk in the pay scale of Rs. 4500-7000. It is the matter of record that she also cleared the Appendix II-A examination but was not yet promoted till the OA was decided by the Tribunal.

5. The respondent had been requesting the petitioners to give reasons as to why she was not granted the pay scale available for a graduate even though she was enjoying the pay scale of 4000-6000 in CISF to which no reply was sent. Rather vide a letter dated 06.08.2007, the petitioners had informed her that notional fixation of pay of the sports person shall be at the minimum of the pay scale after filing an RTI, out of turn promotion was granted to her in the pay scale of Rs. 4500-7000 instead of Rs. 5500-9000.

6. Before the Tribunal it was argued on behalf of the petitioner that the respondent at the time of recruitment in Railway was not eligible for higher pay in the pay scale of Rs. 4500-7000 because as per the advertisement, the pay scale of Rs. 4500-7000 depended upon the sports performance. It was submitted that as per the recommendations of the recruitment Committee after conducting a trial, she was only recommended for the pay scale of Rs. 3050-4500 but later on she was given higher pay scale by promoting her to the pay scale of Rs. 4500-7000.

7. It is surprising to note that the same respondent who was stated to have not achieved the level of performance at the time of trial, though no records have been placed on record, has been given a higher pay scale after she applied for an information under the RTI. The Tribunal, therefore, allowed the OA filed by the respondent by making the following observations:

7. We have carefully considered the rival contentions of the parties and perused the material on record. The advertisement published by the respondents was issued with an intelligible differentia and has reasonable nexus with the object sought to be achieved, which was to fill up the sports quota by sports persons. Applicant, who was a well acclaimed National and International athlete and a

graduate, had come in the eligibility criteria for grant of pay scale of Rs. 4500-7000. However, the trial held by the Railway authorities found her fit only for grant of lower pay scale. Applicant not only participated in the Asian Athlete Championship but also world-class country championship and had stood first in 5000 meter. The justification put-forth by the respondents that she has been found to be apt for a lower pay scale is highly contradictory to their conduct post appointment of the applicant, where on her sports achievements she has not only been given six special increments but also promotion on out of turn basis for outstanding sports performance. If the performance of applicant in the past or in the Railways was found outstanding then placing her in a lower pay scale despite being graduate is not good administration on the part of the respondents. We do not find any reasonableness or justification in the act of the respondents of placing applicant at the time of inception in service in a lower pay scale. Her outstanding performance in sports clearly entitled her to be considered in the higher pay scale, which has been denied by the Railway authorities without any basis. In our considered view, the unfairness of the respondents has to be tested on the touchstone of reasonableness as per the decision of the Apex Court in Noida Enterprises Association v. Noida Authority 2008 (1) SCC (L&S;) 672 does not pass the test. In administrative decision when abuse of power takes place, judicial review is permissible as held by the Apex Court in Meerut Development Authority v. Association of Management Studies : 2009 (8) Scale 49.

8. Sports in this country having such a big population are going down day by day. No good sportsman is emerging out of this population. This is because of the unreasonableness and unfairness of the authorities while dealing with sports persons. In the instant case, which is a glaring example how a good sportsman is treated, the applicant who is a well-acclaimed National and International athlete having brought laurels to the country has to now litigate for redressal of grievance before us. Had this been in some other country like USA irrespective of sports achievements would have been suitably awarded. This apathy due to fault in the system and arbitrariness on the part of the authorities has led to discouragement amongst the sports personalities to shy away from Government service. If they are not suitably rewarded for their achievements a time will come when sports would be an obsolete choice of the country, which would ultimately affect public interest

and reputation of this country as well. Applicant, who has been appointed under sports quota with an excellent track record being a graduate has been wrongly placed by the respondents in a lower pay scale, which cannot be sustained in law.

8. We have considered the submissions made by the learned Counsel for the petitioner that in the present case the respondent herself accepted the appointment in lower pay scale as she was not found fit for granting the higher pay scale and, therefore, she was not entitled to raise up the issue subsequently. However, the learned Counsel has not been able to show us as to how a graduate could be granted a lower pay scale even if submissions made by the counsel are to be accepted per se. The criteria as quoted above goes to show that even if sports performance was one of the criteria but that means that if the criteria is not met by the applicant whether one is graduate or under-graduate, the notification does not entitle to place a graduate in a lower pay scale. In any event, the grant of special increment and then further promoting her just within a span of two-three years itself falsifies the case of the petitioner that the respondent was not able to satisfy the sports criteria at the time of her initial selection. However the respondent was already working in the pay scale of 4000-6000 in CISF and therefore there is no reason for her to accept a lower pay scale. Hence, we do not find any infirmity in the order passed by the Tribunal calling for any interference by this Court under Article 226 of Constitution of India. The writ petition is, therefore, dismissed.

9. All the pending applications are also disposed of.

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