



LPA-1579-2015 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA-1579-2015 (O&M)

Reserved on: 15.01.2025

Date of Pronouncement: 21.01.2025

NATIONAL BRAIN RESEARCH CENTER, NH-8, MANESAR
GURGAON & ANR.

. . . . Appellants

Vs.

MAHENDER KUMAR SINGH & ORS

. . . . Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Varun Veer Chauhan, Advocate
for the appellants.

Dr. Mahender Kumar Singh, respondent No.1 in person.

SANJEEV PRAKASH SHARMA, J.

1. The appellants assail the order dated 27.08.2015 passed by the learned Single Judge whereby the Single Judge has allowed the writ petition and directed the respondent No.1/writ petitioner to be treated to have been appointed in the pay scale of Rs.15,600-39100 with the grade pay of Rs.6600/-, and further consequential arrears to be paid to him within a period of three months with interest @ 8% per annum.
2. Brief facts which need to be noticed for adjudication of this case are that an advertisement was issued by the National Brain Research Centre (for short 'NBRC'), Institute of Biotechnology, Government of India for conducting research in Neuroscience and undertaking basic research towards understanding brain structure and function in health and disease. The post of Information Scientist was advertised with pay



scale of Rs.10000-15200 with essential qualification of post graduation with 5 years experience in System/Networking Administration, or Ph.D in any branch of Science/Computer Science with 4 years experience in System/Net Working Administration. It was further desired to have a candidate having a proven background in concepts and applications of organizing information/data retrieval from online systems, database administration, Local Area Network (LAN), Server maintenance and troubleshooting for LAN/WAN and networking issued was to be given preference, Structural Biology, analysis, experience in lab, website management and development, exposure to Bio informatics application. As per clause 5 of the general conditions of the advertisement, the candidates may be considered for higher/lower grade depending on their profiles.

3. The writ petitioner, who was an in-service candidate, applied and was selected and was offered the post of Information Scientist in NBRC in the pay scale of Rs.15600-39100 with a grade pay of Rs.5400/- plus other allowances vide their letter dated 23.04.2010. The appointment was stated to be on contract for 5 years with a probationary period of one year from the date of joining. The minutes of the Selection Committee were also conveyed which reflected that the petitioner had been selected by the Selection Committee held on 24.11.2009. However, while 5 other persons were appointed in the revised pay scale of Rs.15600-39100 with a grade pay of Rs.6600, so far as the petitioner is concerned, it was stated that after going through the bio data and performance of the candidate in the interview, the Committee



recommended petitioner's appointment as Information Scientist by downgrading above scale of pay to Rs.15600-39100 with a grade pay of Rs.5400/-.

4. The petitioner preferred the writ petition after making a representation challenging the grant of lower grade pay to the petitioner in the same pay scale as to the other candidates.
5. Learned Senior counsel for the appellants has submitted that the general conditions of the advertisement provided under clause 5 that the candidates may be considered for higher/lower grade depending on their profiles was one of the condition for appointment. In view of the said condition of advertisement, the writ petitioner was placed in the pay scale of Rs.15600-39100 with a grade pay of Rs.5400/-, based on his biodata and performance in the interview. Thus, his profile was found to be of the level where he should be placed in the lower grade.
6. Learned counsel for the appellants has further taken this Court to the proceedings of the meeting of the Committee constituted to look into the complaint about appointment of the respondent No.1/writ petitioner as Information Scientist. The Committee was of the opinion that the petitioner had served as Project Assistant at consolidated emoluments of Rs.5000/- in Bioinformatics Centre, Institute of Microbial Technology, Chandigarh and thereafter worked as Computer Operator, Programmer and a Junior Information Scientist in NBRC. No experience certificate was attached, and therefore it submitted an opinion that the experience as Project Assistant was not in the required field of System/Networking Administration whereas experience in the



NBRC may be considered as requisite experience, and therefore his experience with effect from joining in NBRC can only be considered as qualifiable experience for the post of Information Scientist. This report submitted by the Committee dated 29.10.2014, therefore, reflects that Selection Committee had found his profile fit to place him in the lower grade.

7. It has been stated that this Court while admitting the appeal had noticed that the appellants cannot be heard to question the petitioner's entitlement of higher grade pay from the date of his appointment on regular basis, and the stay order was modified accordingly. He therefore submits that the Division Bench had, while admitting the appeal, allowed entitlement of higher grade pay from the date of regularization, and the order passed by the learned Single Judge of granting higher grade pay from the date of initial appointment ought to be set aside.
8. Learned Senior counsel therefore submits that the appeal deserves to be allowed. He submits that as the relief has been granted by an interim order to the respondent No.1/writ petitioner granting him regular pay from the date of regular appointment, the same may be made absolute.
9. *Per contra*, respondent No.1/writ petitioner submits that the NBRC does not have the power and authority to downgrade the pay scale of the sanctioned post of Information Scientist below the minimum prescribed for the post. Once the petitioner is found suitable for selection for the post of Information Scientist, he could not have been placed in a lower pay scale to that of Information Scientist. The revised



pay scale of Information Scientist was Rs.15600-39100 with a grade pay of Rs.6600. While the petitioner's appointment was shown to be on contractual basis, it was a regular appointment made in accordance with the provisions contained under the NII Recruitment Rules, 1996 (for short 'the Rules') which provided for filling up direct recruitment post by way of appointing selected candidate on contract initially for a maximum period of 5 years, whereafter he was to be offered regular appointment on completion of 5 years of contract service. It was further provided as per clause 7 under the Rules that a departmental candidate who is selected for appointment shall be deemed to have filled the post by direct recruitment. The respondent No.1/petitioner therefore supports the order passed by the learned Single Judge.

He has further stated that he had been a whistle-blower in the department and had raised several questions relating to the functioning of the officers in the department. Resultantly, when he participated in the selection process, one of the members of the Selection Body who was holding a post lower than the post for which the selection was being conducted, deliberately and malafidely placed the petitioner on a lower pay scale. The exercise was conducted with a deliberate intent to harm the petitioner. He submits that there is no power available in the Rules to appoint on a post in a lower pay scale or grade pay than the prescribed for the post. He has also taken this Court to the judgment of the Single Bench to submit that the Single Judge has observed that *"the power of upgradation or downgrading of the existing sanctioned*



core posts vests with the Department of Biotechnology, Government of India”.

10. He also submits that the appellants have prepared a false ex-parte opinion on the basis of an anonymous complaint prepared against him. The said opinion has been made as a basis to support the order of lowering down the pay scale of the petitioner. He alleges that the said ex-parte opinion report has been granted without giving any opportunity of hearing to the petitioner, and the same ought not be taken into consideration.
11. The respondent No.1/writ petitioner has further submitted that the interim order passed by this Court protecting his grade pay of Rs.6600/- from the date of regularization has resulted in causing further loss to him, as he being placed in the grade pay of Rs. 5400/- in the same pay scale of Rs.15600-39100 had earned increments in the grade pay of Rs.5400/- for 5 years which resulted in his salary higher than his salary treating him being a fresh appointee from the date he was regularized. The appellants treated him as a fresh appointee from the date of regularization i.e. 26.04.2015 and placed him in the grade pay of Rs.6600/- resulting in lowering down his salary. His entire 5 years of service were put to an end, and the benefit of 5 years' increments has been lost, while the other persons who were appointed along with him on contract basis have continued to draw 5 years' increments, and are much above him in the pay scale.
12. We have considered the submissions.



13. From the perusal of the record, we find that the writ petition was preferred by the petitioner in 2012, wherein he had prayed as under:

“[a] call the record of the case;

[b] issue a writ in the nature of certiorari thereby quashing the action of the respondents in down grading the pay scale of the petitioner for the post of Information Scientist in the lower scale of Rs.15600-39100 with Grade Pay of Rs.5400 being contrary to the post so sanctioned/advertised for the higher pre-revised scale of Rs.10000-15000 (Corresponding revised pay scale of Rs.15600- 39100 with Grade Pay of Rs.6600/-) and to award arrears thereto with interest @ 12% p.a.;

[c] or issue any other direction which this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the case in the interest of justice.

[d] filing of certified copies annexures may kindly be dispensed with; of

[e] Advance notices upon the respondents may kindly be dispensed with;”

14. The appellants were directed to produce the Rules which empowered the appointing authority to reduce the grade pay of the post. The learned Single Judge examined the condition No.5 in the advertisement and noticed that the grade pay for the post of Information Scientist was revised in terms of the recommendations of the Central Civil Services (Revised Pay) Rules, 2008 extended to autonomous institutions. We find that there was no downgradation of the post, nor any alternative grade pay was available for the said post. In fact, the Direct Recruitment provisions of the Rules read as under:

“7.1 The candidates possessing the educational qualifications and experience as specified in Schedules are



eligible for direct recruitment and shall be selected by the Expert Selection Committee as specified in Schedule IV.

7.2 The selected candidates, from the date of assuming the duties will be on contract initially for a maximum period of five years. At the end of four years of service the candidates performance will be assessed by an Assessment Committee to be appointed by the Appointing Authority to decide if the candidate's performance during the four years service has been satisfactory or otherwise. If his/her performance is found to be satisfactory by the Assessment Committee, he/she will be offered regular appointment on completion of five years contract service. In case his/her performance is not found to be satisfactory, his/her contract service will stand terminated at the end of five years term of the initial contract appointment.

7.3 In case a departmental candidate is selected for appointment for the post through this method, the same shall be deemed to have been filled by Direct Recruitment.

7.4 Direct recruits may be given, in deserving cases, to be so recorded by the Expert Selection Committee, higher initial start than the minimum of the scale to which they are appointed. However, such an initial start shall not exceed five advance Increments over the minimum of the scale. Recommendations, if any, by the Expert Selection Committee for grant of more than five advance increments will be examined by the Governing Body of the N.I.I., which is the competent body to decide the same.”

15. From perusal of above, it is apparent that as per clause 7.4, the Expert Selection Committee may grant higher initial start than the minimum of the scale to a candidate in deserving cases, which shall not exceed five advance increments over the minimum of the scale. Thus, a conjoint reading of clause 5 of the advertisement, and clause 7.4 of the Rules would mean that Selection Committee may grant a higher start



to any individual than the minimum of the pay scale. However, the Rules do not provide any power to lower down the grade pay of the post.

Since the grade pay for the post of Information Scientist is Rs.6600/-, the appointment of the writ petitioner on grade pay of Rs.5400/- has to be treated as wrongful and unjustified.

16. The Single Judge has also noticed the documents placed before it received under the RTI Act, 2005 which too reflects the power not to be available with the Selection Committee, and it is an admitted position that the NBRC has not downgraded the post.
17. Any person working on a particular post is entitled to receive the pay and allowances of that post. As observed by the Single Judge based on the documents placed before it, we affirm that the authority to create the core posts in the NBRC vested with the Ministry of Finance. Such authority is on the basis of recommendations of Department of Biotechnology, Government of India, who would therefore have the power to upgrade or downgrade the sanctioned core posts.
18. We also find from the position of the Rules that a departmental candidate appointed by the method of direct recruitment in terms of Rules 7.2 and 7.3 would be posted on a sanctioned post, although his services are mentioned as contractual. Such appointment is distinct from the ordinary contractual appointments, since the method of appointment on the post results in finally appointing the person on regular basis.



19. The scheme of Rules reflects that the record of the performance of the person, who is appointed as Information Scientist, would be examined for 5 years. It is like placing a person on probation for 5 years. We also notice that after regular appointment, he continues to draw the same pay scale and increments. The petitioner's services have been found to be above board during contractual period, and he has been also regularly appointed. Thus, it cannot be said that he was having any lower profile, nor any other person was specially granted increments in terms of Rule 7.4 of the Rules. Thus, the petitioner has to be treated at par with his other colleagues who have been appointed under the same selection. Distinguishing his case has been found to be arbitrary, and we confirm with the view taken by the Single Judge.
20. The contention of the learned counsel for the appellants based on the report prepared during the pendency of the writ petition mentioning the petitioner not to possess the sufficient experience deserves to be ignored, and the same has rightly been ignored by the learned Single Judge. The Committee which has examined the experience of the writ petitioner has not given any opportunity of hearing to the petitioner, and its report has to be treated as a mere opinion, which is irrelevant for the purpose of examining the appointment of the petitioner and recommendations of the Selection Committee which made the selection in the year 2010.
21. The reasons for offering appointment on a lower grade cannot be prepared after a period of 4 years by forming a Committee to examine the experience. It was not for the concerned subsequent Committee to



state as to whether the petitioner's experience acquired as Project Assistant in the Bioinformatics Centre, Institute of Microbial Technology could be denied for counting the 5 years of experience. The appellants themselves have confirmed the respondent No.1/writ petitioner on the post. In view thereto, the contention of the appellants is found to be wholly misconceived and without basis.

22. Appeal is found lacking in substance and on merits. The order passed by the learned Single Judge does not warrant any interference by us. Appeal is accordingly **dismissed**. The appellants shall now comply with the order passed by the Single Judge, and accordingly revise the pay and allowances of the writ petitioner.

23. Compliance of the order of the Single Judge shall be done within a period of three months henceforth.

24. Interim orders passed by this Court stand disposed of in aforesaid terms.

25. No costs.

26. All pending applications stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

21.01.2025

Mohit goyal

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No