

Matter of Marcelin v State of New York

2013 NY Slip Op 31429(U)

June 18, 2013

Supreme Court, St. Lawrence County

Docket Number: 139743

Judge: S. Peter Feldstein

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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ST. LAWRENCE

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In the Matter of the Application of
HARVEY MARCELIN, #86-A-7063,

Petitioner,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

**DECISION AND JUDGMENT
RJI #44-1-2012-0631.26
INDEX #139743
ORI # NY044015J**

-against-

**STATE OF NEW YORK, and
BRIAN FISCHER, Commissioner,
NYS Department of Corrections and
Community Supervision,**

Respondents.

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This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Harvey Marcelin, verified on August 26, 2012 and filed in the St. Lawrence County Clerk’s office on August 29, 2012. Petitioner, who is an inmate at the Riverview Correctional Facility, is challenging his current inmate pay grade classification and seeks a retroactive pay increase. The Court issued an Order to Show Cause on September 4, 2012 and has received and reviewed respondents’ Answer and Return, verified on November 9, 2012, as well as petitioner’s undated Reply thereto, filed in the St. Lawrence County Clerk’s office on November 27, 2012.

In this proceeding petitioner asserts, and the record reflects, that during the long course of his incarceration in DOCCS custody he was employed for extended periods of time in the law libraries of various facilities at a Grade 4 pay rate. On or about September 26, 2011 petitioner was transferred to the Riverview Correctional Facility where he remains confined. After a one-week orientation period petitioner briefly programed as a porter at a Grade 1 entry level pay rate. Commencing on or about

October 17, 2011 petitioner was re-assigned to the Riverview Correctional Facility Law Library, under the job title “CLERK, TYPIST,” at an initial Grade 3 entry level (Step 1) pay rate of \$.20 per hour¹.

On or about January 18, 2012 petitioner filed an inmate grievance proceeding (RV-10306-12) wherein he alleged as follows: “I believe I have inadvertently been given a GRADE-3 payscale in contrast to previous assignments in the same category starting at GRADE-4 STEP-1.” In his grievance petitioner requested that his job “. . . assignment strictly conform to MJOT [Master Job Organization Table²] and NYSD[O]CSS Directive #4802 plus the retroactive owed.”

By response dated January 19, 2012 the Inmate Grievance Resolution Committee (CIGRC) declined to recommend a position/wage increase noting that a decision of that nature “. . . is the responsibility of the area supervisor or the program committee . . .” Petitioner disagreed with the IGRC response and by decision dated January 20, 2012 the facility superintendent affirmed the IGRC response as follows:

“In accordance with Facility Operating Manual Policy #0617, Program Classification and Assignment,

‘. . . Inmates assigned at Program Committee will be assigned to Step 1 pay at the lowest grade level available. Advancements in pay scale will be determined by the work location supervisor . . .’

¹ Petitioner has apparently since been promoted to the Grade 3 Step 2 pay rate of \$.2167 per hour in the same “CLERK, TYPIST” job title.

² The MJOT is apparently “. . . a listing of all inmate jobs according to specific work locations.” (See GUIDELINES FOR PROGRAMING INMATES, page 2 (PAYROLL SYSTEM) annexed to the petition as an undesignated exhibit.

This policy goes on to explain that if qualified, an inmate can be recommended for promotion at any time to fill [a] vacate item. This decision is at the discretion of the payroll supervisor.

In the grievant's case, he was promoted in the Law Library as a Clerk Typist, starting at Grade 3, Step 1 pay. The payroll supervisor will decide on pay and position advancement.

Request for advancement and backpay through the grievance process is denied.”

Upon administrative appeal to the DOCCS Inmate Grievance Program Central Office Review Committee (CORC) petitioner asserted that FOM [Facility Operating Manual] Policy #0617 is erroneously interpreted on Facility level and is at odds with both MJOT and Albany Central Office Chief Law Librarian in that the Grievant's payscale ought have started at GRADE-4 STEP-1 in accordance with the category(s) history while Grievant alleges that he should not be demoted.” (Emphasis in original).

By final decision dated June 27, 2012 the CORC found as follows:

“Upon full hearing of the facts and circumstances in the instant case, and upon recommendation of Department's Law Library Coordinator, the action requested here and is accepted only to the extent that CORC upholds the determination of the Superintendent for the reasons stated.

CORC notes that grievant was assigned as a Clerk Typist in the Law Library, starting at grade 3, step 1 pay, and that his current pay rate is grade 3, step 2. CORC asserts that inmates are payed according to their job assignment and that previously having a grade 4 program assignment is not an entitlement to receive grade 4 pay.

With respect to the grievant's appeal, CORC has not been presented with sufficient evidence that he is incorrectly paid.”

This proceeding ensued.

In order to prevail on his challenge to the final results of inmate grievance proceeding RV-10306-12 petitioner “. . . must carry the heavy burden of demonstrating that the determination by CORC is irrational or arbitrary and capricious.” *Frejomil v.*

Fischer, 68 AD3d 1371, 1372 (citations omitted). See *Williams v. Goord*, 41 AD3d 1118, *lv den* 9 NY3d 812 and *Winkler v. New York State Department of Correctional Services*, 34 AD3d 993. For the reasons set forth below, however, the Court finds that petitioner has failed to carry this burden.

A DOCCS inmate has no constitutional, statutory or regulatory right to the prison job he or she desires. See *Evans v. State of New York*, 57 AD3d 1123, *lv den* 12 NY3d 704. *Henriquez v. Department of Corrections*, 53 AD3d 993, *Stephens v. Central Office Review Committee of the New York State Department of Correctional Services*, 255 AD2d 845, *Lee v. Coughlin*, 142 AD2d 802, *app dis* 72 NY2d 1041, *cert denied* 488 US 1014 and *Semkus v. Coughlin*, 139 AD2d 868, *lv den* 72 NY2d 808. This Court finds that the facts and circumstances in *Semkus* (the last of the cases just cited) are particularly relevant with regard to the facts and circumstances in the case at bar.

Like the broad, “almost unbridled,” scope of DOCCS authority to transfer an inmate from one facility to another (see *Salahuddin v. Coughlin*, 202 AD2d 835, 836 quoting *Johnson v. Ward*, 64 AD2d 186, 188), this Court finds that the ordinary exercise of DOCCS officials’ discretion in assigning an inmate to a particular prison job at a particular rate of pay should not be disturbed absent clearly stated impermissible reasons. See *Taylor v. Kennedy*, 159 AD2d 827. Simply put, this Court will not ordinarily engage in a review of a particular inmate’s educational qualifications/work experience with a view towards substituting its judgment for that of DOCCS officials in the assignment of such inmate to a particular prison job at a particular pay rate. Similarly, this Court will not ordinarily engage in a review of the nature of the tasks performed by a particular inmate in a particular job title for the purposes of comparing such tasks to

tasks performed by such inmate in his/her previous prison job(s) with a view towards substituting its judgment for that of DOCCS officials with respect to the appropriateness of such inmate's current prison job title.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is dismissed.

Dated: June 18, 2013 at
Indian Lake, New York

S. Peter Feldstein
Acting Justice, Supreme Court