
(2012) 04 DEL CK 0452
In the Delhi High Court
Case No : Writ Petition (C) 2351 of 2012

Ashok Kumar

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0452

Hon'ble Judges : V.K. Shali, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : N.S. Dalal and Mr. Devesh Pratap Singh, for the Appellant; Avnish Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.

1.This batch of 15 petitions arise out of the common order dated 31.01.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi and are being disposed of together. The lead matter before the Tribunal was OA2410/2011 titled Shri. Ashok Kumar v. DTC. The facts in all the petitions are virtually identical. The issue which was raised before the Tribunal by the petitioners herein was that they were entitled to seek the benefits of the second financial upgradation in the year 2006 onwards but they were denied the same. The facts are that the petitioners were initially appointed as Conductors with the respondent (DTC) on daily wages in 1982-83 and were regularized in the course of time. The respondent implemented the ACP Scheme w.e.f. 12.08.2002. The petitioners were subsequently, in 2005, appointed as Assistant Store Keepers on the basis of a selection process. The appointment order covering all the petitioners was dated 06.06.2005 which, to the extent relevant, reads as under:-

The following Conductors have been found suitable for the post of ASK and are hereby appointed as "Asstt. Store Keeper` with immediate effect in the pay scale of Rs.3200-85-4900 on the terms & conditions enumerated hereunder. Their

posting have been indicated against each:

xxxx They will be on probation for a period of one year.

They can be reverted to their substantive post at any time without notice and without assigning any reason therefor. They will continue to draw their basis pay/perks in the pay-scale they are getting and no additional monetary benefit will be given instantly on their re-designation/appointment.

For the purpose of financial upgradation/promotion, their regular service will be counted from the date of their appointment as Asstt. Store Keeper and their candidature can be considered for promotion to the post of Store Keeper/Chief Store Keeper on the principle of seniority-cum-fitness.

They will be treated as fresh appointees as A.S.K. However, their past seniority shall be counted towards pension benefits etc., if applicable as per rules. xxxxx

(emphasis supplied)

2. A plain reading of the said appointment order makes it clear that for the purpose of financial upgradation/promotion, regular service of the petitioners would be counted from the date of their appointment as Assistant Store Keepers and that their candidature could be considered for promotion to Store Keepers/Chief Store Keepers on the principle of seniority or fitness. It was specifically provided in the appointment order dated 06.06.2005 that the petitioners would be treated as fresh appointees to the post of Assistant Store Keepers. However, their past seniority was to be counted towards pension benefits etc., if applicable, as per rules. It is, therefore, clear that insofar as financial upgradation was concerned, the regular service of the petitioners was to be counted from the date of their appointment as Assistant Store Keepers and it is only for the purpose of pension benefits etc. that their past seniority was to be taken into consideration, if applicable, as per rules.

3. There is no dispute that the petitioners accepted the appointment pursuant to the said appointment order dated 06.06.2005 without any demur. The acceptance of the appointment meant that they also accepted all the terms specified in the appointment order which included the term that for the purpose of financial upgradation, their regular service would be counted from the date of appointment as Assistant Store Keeper.

4. In fact the petitioners did not even challenge the appointment order till the filing of the original applications which were disposed of by the impugned order. In this backdrop, the question of delay had also been gone into by the Tribunal and they found that the original applications filed by the petitioners were also barred on account of delay and laches.

5. However, even on merits, we find that the petitioners have no case. An attempt was sought to be made by the learned counsel for the petitioners by invoking the clarification given to query Nos.4, 5 & 6 by virtue of the office

memorandum dated 10.02.2000 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training). The said office memorandum indicates that consequent upon the introduction of the Assured Career Progression Scheme (ACPS) on 09.08.1999, clarifications had been sought by various Departments of Ministries about certain issues, in relation to the implementation of the said ACPS. The office memorandum further indicated that the doubts raised by various quarters had been duly examined and appropriate answers had been indicated in the annexure to the said office memorandum. In the present case, we are only concerned with the clarifications given in respect of query Nos.4, 5 & 6. The same read as under:-

4.

In case where a person is appointed to a post on transfer (absorption) basis from another post, whether 12 years and 24 years of service for the purpose of ACPS will count from The initial appointment or

otherwise.

The benefits under ACPS are limited on

higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As

such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long

as he is in the same pay scale. In other

words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which

appointment was made by different

methods like direct recruitment, absorption (transfer) deputation, or at different places should be taken into account for computing the prescribed period of service for the

purpose of ACPS. Also, in case of

absorption (Transfer)/deputation in the

aforesaid situations, promotions earned in

the previous/present organizations,

together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to

higher pay-scale either as on direct

recruitment or on absorption (Transfer)

basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS. Needless to say, in cases of transfer on the administrative ground, involving change of station within the same department, the service rendered in the same grade at two stations may count for ACPS, as such transfers are within the same organization,

5.

Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial up-gradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent

second appointment as direct recruit?

6.

An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be terms as promotion or direct recruitment. What will be the case if an employee on deputation holds a post in the same pay-scale as that of the post held by him in the present cadre? Also ,what will be the situation if he was holding a post in the present cadre carrying a lower pay-scale.

(emphasis supplied)

6. Although the learned counsel for the petitioners sought to place reliance on clarifications issued in respect of the said query Nos.4, 5 & 6, we do not see as to how the clarification is in support of the petitioner's ase. On the contrary, the clarification makes it clear that it deals with cases of government servants who have been appointed to other posts but remain in the same pay scale. The appointments may be by direct recruitment or on absorption (transfer) basis or first on deputation basis and later, on being absorbed. The clarification states that if the subsequent appointment is made in the same pay scale, it should not make any difference for the purpose of the ACPS. In other words, the key condition is that the government servant should be in the same pay scale. It is further provided in the said clarification that if the appointment is made to a higher pay scale either on direct recruitment or on absorption (Transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for the benefits under ACPS.

7. Thus, the said clarification makes it absolutely clear that when there is a higher pay scale in the subsequent post, the past service shall not be counted for the benefits under the ACPS. In this backdrop all that needs to be seen is whether the pay scale of the petitioners as Conductors and the pay scale as store keepers was the same or not. It is an admitted position that the pay scale of a Conductor was Rs.3050-4590 whereas that of an Assistant Store Keeper was Rs.3200-4900. It is obvious that the two pay scales were not identical and, therefore, the petitioners cannot place any reliance, in their favour, insofar as the said clarification is concerned.

8. We also find that the appointment order dated 06.06.05 had been accepted without any demur by the petitioners. They cannot now resile from the same. They had accepted their appointments as Assistant Store Keepers on a higher pay scale compared to that of their previous positions as Conductors which were on a lower pay scale, subject to the conditions mentioned in the appointment order. Having accepted the same they cannot now be permitted to resile from such acceptance and that, too, after such a long duration of time.

9. In view of the foregoing, we find no infirmity in the conclusion arrived at by the Tribunal in the impugned order. Consequently, the writ petitions are dismissed. There shall be no orders as to costs.