
(2014) 07 P&H CK 0859
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3360 of 2009

Jaswant Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Citation : (2014) LabIC 3952

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Ajay Tewari, J

Bench : Division Bench

Advocate : V.K. Sharma, Advocate for the Appellant; Ajay Kaushik, Advocate for the Respondent

Judgement

Sanjay Kishan Kaul, C.J.—The only moot point involved in the present case is as to whether in the process of a cadre review where two scales are carved out, the same would amount to promotion. The petitioner is aggrieved by his pay-fixation in pursuance to the recommendations of the 5th Pay Commission and thus approached the Central Administrative Tribunal, Chandigarh Bench vide O.A. No. 687-PB-2006 which has been dismissed vide the impugned order 27.08.2008.

Facts of the case

2. The petitioner joined the services of All India Radio at Kashmir as Investigator on 24.08.1983 and was subsequently transferred to Jalandhar. He was drawing the pay scale of Rs. 1400-2300 when on a revision of pay scale w.e.f. 01.01.1996 he was granted the pay scale of Rs. 5000-8000 and was re-designated as Investigator Grade-II. In terms of the recommendations of the 5th Pay Commission, the restructuring of the cadre was recommended as a consequence of which the petitioner claims that he was entitled to the pay scale of Rs. 5500-9000. In this behalf, he has relied upon paras 73.22 and 73.23 of the 5th Pay Commission Recommendations. The relevant portion of para No. 73.22 is extracted as below:--

"Reconstructing the Cadre:--

73.22 The other demands made are that (i) different posts in Audience Research Wing be upgraded keeping in view the increased work load in various stations/ Kendras due to increase in channels and programmes and (ii) provision be made for selection grades or time-bound promotions at every level in view of the acute stagnation in different posts in ARW. We have examined the Recruitment Rules and the availability of promotion avenue for various posts and recommend restructuring of the cadre as under:--

(i) The cadre of Statistical Computer (Rs. 1200-2040) be declared as a dying cadre and further recruitment at this level should be stopped.

(ii) Existing computers may be placed in the scale of Rs. 1400-2300. The existing 100 posts of Investigator and 7 posts of Statistical Assistant may be merged and placed in two grades to be designated as Investigator Grade II (Rs. 1600-2660) and Investigator Grade I (Rs. 1640-2900). 57 out of 107 posts may be re-designated as Investigator Grade II and 50 as Investigator Grade I. Statistical Computer may also be made eligible for promotion as Investigator Grade-II in the scale of Rs. 1600-2660."

3. The petitioner claims that on 8.8.2000 the relevant paras of the Pay Commission recommendations were implemented and the posts of Investigators and Statistical Assistants were merged. Out of 95 posts of the merged cadre, 44 were placed in the pay scale of Rs. 5500-175-9000 while the remaining 51 posts were placed in the pay scale of Rs. 5000-8000 to be re-designated as Investigator Grade-I and Investigator Grade-II, respectively. The petitioner was granted the pay scale of Rs. 5500-9000 on 20.09.2000 and was thus re-designated as Investigator Grade-I being at Sr. No. 12 in the list of Investigators Grade-I.

4. On 16.03.2001, the pay of the petitioner was fixed in the pay scale of Rs. 5500-9000 w.e.f. 08.08.2000 under the Central Civil Services (Revised Pay) Rules, 1997. The petitioner was granted first ACP in the pay scale of Rs. 6500-10500 vide order dated 05.12.2001 along with arrears on the introduction of ACP w.e.f. 09.08.1999 and the pay of the petitioner was fixed in that scale vide order dated 27.02.2002.

5. The grievance of the petitioner arose when an order was passed on 11.07.2006 withdrawing the pay scale of Rs. 6500-10500 granted to the petitioner and simultaneously seeking to recover the over payments stated to be made on account of a mistake. The Tribunal, however, negated the contention of the petitioner while coming to the conclusion that the petitioner had been granted a promotion as Investigator Grade-I, when his pay scale was fixed in the scale of Rs. 5500-9000 but directed that no recovery is to be made from the petitioner. It is the petitioner alone who has assailed this order.

6. We have heard learned counsel for the parties and perused the record.

Conclusion:--

7. It is obvious from a reading of Clause 73.22 of the 5th Pay Commission Recommendations that it deals with "restructuring the cadre". The objective of the extracted portion was to give two separate scales in the redrawn cadre combining posts of Investigators and Statistical Assistants. Thus, while 57 out of 107 posts were re-designated as Investigator Grade-II, 50 posts were designated as Investigator Grade-I. As noticed at the inception, the question is as to whether this would really amount to promotion or it is merely an exercise carried out in restructuring the cadre. If it is a promotion as held by the Tribunal, then the petitioner is not entitled to the relief and the order passed by the respondents on 11.07.2006 cannot be faulted while the result would be contrary if it was not promotion.

8. The issue as to distinction between a promotional post or upgradation involving selection as distinguished from a mere upgradation or upgradation simpliciter, forms part of the discussion in *Bharat Sanchar Nigam Ltd. Vs. R. Santhakumari Velusamy and Others*, . The significant feature pointed out is that there has to be element of selection involved in granting selection grade because there is no automatic promotion in the selection grade pay scale. The Bench of the Hon'ble Supreme Court proceeded to discuss various judicial pronouncements and culled out the principles as under:--

"29. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both that is advancement to a higher position and advancement to a higher pay scale - are described by the common term "promotion", does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will

be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simpliciter can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simpliciter. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simpliciter. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(v) Where the process is an upgradation simpliciter, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation."

9. If we apply the aforesaid principles to the facts of the present case, we find that the essential ingredient of a promotion having been set out as advancement in rank or grade to higher post is clearly absent. It is really an upgradation in terms of principle (ii) as the financial benefit is sought to be conferred by raising the scale of pay of the post without there being movement from a lower position to a higher position. It was merely a restructuring exercise. There was no process of selection or consideration of comparative merit or suitability involved as is required for a promotion as per principle (iv). In principle (vi), a reference has been made to restructuring which may result in some of the existing posts being placed in a higher grade to provide relief against stagnation and that would not be a promotion. This is exactly what has happened in the present case.

10. We are thus unequivocally of the view that the exercise carried out by the respondents in restructuring the cadre thereby carving out two pay scales without any change in the responsibility or selection process being involved, cannot be categorized as promotion and thus are unable to agree with the

findings recorded in the impugned order to the contrary.

11. As a result of our aforesaid conclusion, the impugned order dated 27.08.2008 is set aside and the decision taken by the respondents vide the original impugned letter dated 11.07.2006 is quashed. Rule is made absolute leaving the parties to bear their own costs.