
(2012) 10 MP CK 0098
In the Madhya Pradesh High Court
Case No : Writ Petition No. 122 of 2009 (S)

Kamlapati Dwivedi

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2013) ILR (MP) 62 : (2013) 1 MPLJ 106

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : S.K. Rao, with S.K. Chaturvedi, for the Appellant; N.S. Ruprah, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—Order dated 20-10-2008 passed in Original Application No. 229/2008 by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur is being challenged vide this petition under Article 227 of the Constitution of India. Vide impugned order Tribunal rejected the application whereby petitioner sought benefit of senior grade w.e.f. 7-10-1995 under Chattopadhyaya Pay Commission.

2. Appointed as Trained Graduate Teacher on 7-10-1983 petitioner was promoted Ad hoc Post Graduate Teacher (Sociology) w.e.f. 30-9-1992 in Grade Rs. 1640-2900 (Revised Rs. 6500-10500). While holding the post of Post Graduate Teacher petitioner was subjected to departmental enquiries and denial of senior grade as per Chattopadhyaya Commission Recommendations (which we will adverted to little later). The departmental enquiries culminating into punishment were subjected to challenge in Original Application No. 665/2001 and O.A. 773/2003. Whereas, former Original Application was disposed of with direction to the department to decide the appeal, the latter, which was directed against the punishment order and the appellate order, was allowed on 9-9-2004 and the punishment was set aside. In the interregnum, i.e., during pendency of departmental proceedings since the petitioner became entitled for consideration

for senior grade, the respondent vide order dated 21-8-2002 granted senior scale of Rs. 6500-10500 w.e.f. 6-7-2002; however, with the penalty being set aside the benefit of senior scale was made effective from 24-9-1998 by order dated 14-1-2005.

3. Aggrieved, petitioner preferred an Original Application No. 704/2005 seeking quashment of communication dated 14-1-2005 and the direction for grant of senior scale w.e.f. 7-10-1995 instead of 24-9-1998. The Tribunal vide order dated 25-1-2007, allowed the application holding:

9. We have also noticed that although most of the employees, who were considered for promotion by the DPC held on 10-10-1996 had completed their 12 years of service in 1995, the DPC considered their ACRs for 1994, 1995 and 1996. It is a well laid down principle in respect of promotions that promotion is decided on the basis of ACRs for the relevant period. It was, therefore, incumbent on the DPC to consider ACRs up to 1995 only for such employees and not beyond that. It is not known as to on what basis the DPC decided to look at the ACRs of three years beginning from 1994. It is surprising that although the DPC did meet again on 6-10-1997, it did not consider the case of the applicant. Further, the DPC held on 20-8-1998 does not mention the period for which the ACRs were considered. In view of these facts, we find that the case of the applicant suffers from material irregularities and lapses. Firstly, the DPC that met on 10-10-1996 should have considered sufficient number of ACRs, the last being of 1995 and should have made recommendations on the basis of these ACRs only. In the case of the applicant ACRs of only 1994 and 1995 were considered. Recommendations regarding his promotion or otherwise could not have been made on the basis of only these two ACRs as appears to have been done by the DPC. Secondly, if the applicant was not found fit for promotion by this DPC, his case should have been considered by the DPC held on 8-10-1997 by further taking into account the ACR of 1996. It is needless to mention that pendency of disciplinary proceedings or currency of penalty would have no relevance to the consideration by DPC as the disciplinary proceedings and the penalty had already been quashed by then by this Tribunal. In view of the above discussion, we find considerable merit in the contention of the applicant that denial of promotion with effect from 7-10-1995 is not based on valid grounds.

10. In the result, the OA is allowed. We quash the impugned order Annexure A-1 so far as it relates to the date from which the promotion of the applicant is to be given in the senior grade. We also quash the impugned order dated 22-3-2005 (Annexure A-2) and direct the respondents to hold a review DPC to assess the case of the applicant for grant of senior grade on completion of 12 years of service on the basis of his ACRs up to 7-10-1995, keeping our observations in the preceding paragraph in view. If the applicant is not found suitable for promotion on completion of 12 years of service, his case should be considered on the basis of ACRs in successive years and promotion granted with all consequential benefits with effect from subsequent years, as the case may be

after considering the recommendations of the DPC. The respondents are directed to comply with our directions within a period of two months from the date of communication of this order. No costs.

4. That, review DPC met on 28-3-2007 wherein while taking into consideration the ACRs of the petitioner for year 1994-95 (i.e., 1-4-1994 to 31-3-1995), 1995-96 (1-4-1995 to 31-3-1996) and 1996-97 (1-4-1996 to 31-3-1997), the petitioner was found suitable for grant of senior scale. However, because of the note appended with the recommendation by the Review DPC that "CRs of 1992-93 and 1993-94 of the candidate are both below average. Hence, his CRs from 1994-95 to 1996-97 have been considered for deciding suitability as per Hon"ble Tribunal CAT"s direction." Though difficult to perceive, but the department construed the note being an impediment to extend the senior scale from 7-10-1995 when the petitioner completed 12 years regular service, deferred the same by effecting it from 1-4-1997. This was informed vide communication No. JBP/P/Dec/Sr. Grade dated 30-3-2007.

5. Aggrieved, petitioner preferred Original Application No. 229/2008 seeking direction for grant of senior scale w.e.f. 7-10-1995. The Tribunal vide order dated 20-10-2008 declined to interfere. The Tribunal held:

7. In our considered view, on perusal of the reply as well as the facts noticed here, we are satisfied that the respondents have scrupulously and minutely complied with the directions of this Tribunal by holding review DPC of the original DPC dt. 2nd August, 2006 after considering his ACRs upto 7-10-1995, which admittedly included adverse ACRs ending 31st March, 1994, which the Ld. Counsel very fairly stated has been maintained by the Tribunal when challenged. In the given circumstances, the respondents are fully justified in granting him the benefits only from 1-4-1997 instead of 7-10-1995, as prayed for. There is no illegality or arbitrariness in respondents" action.

6. Contention of the petitioner is that, having been exonerated of the charges levelled against him in a departmental enquiry in the year 1992-93 and there being no adverse remarks in his ACRs of the year 1994-95, 1995-96 and 1996-97 and having been adjudged suitable by the review Departmental Promotion Committee convened on 28-3-2007 in pursuance to order passed by the Tribunal in O.A. No. 704/2005, the respondents are not justified in not granting the senior grade with effect from the date when the petitioner completed 12 years regular service, i.e., from 7-10-1995.

7. Respondents on their turn justified the decision taken of granting senior grade from 1-4-1997. The reasons assigned are that since the petitioner had earned adverse confidential report in the year 1992-93 and 1993-94, he was rightly not held entitled for senior scale w.e.f. 7-10-1995 but was found eligible w.e.f. 1-4-1997.

8. The issue, therefore, which crops up for consideration is as to whether when 3 years ACRs preceding the date of holding of review Departmental Promotion

Committee held on 7-10-1997 were found satisfactory, the respondents are justified in denying the benefit to the petitioner of the senior scale w.e.f. the date when he completes 12 years of regular service in a grade and whether the Tribunal appreciated the policy and the facts in right perspective. For an answer the scheme whereunder senior grade has been conferred on the basis of Chattopadhyaya Recommendations may be looked into.

9. Ministry of Railways on the recommendations of the National Commission on Teachers under the Chairmanship of Professor D.K. Chattopadhyaya decided that the revised (IV Pay Commission) Scales and Selection Grades for Teachers on Railways should further be revised. The acceptance of recommendations of Chattopadhyaya Commission was circulated vide Railway Board Establishment No. E (P&A) I 87/PC-5/PE-5 dated 11-1-1988. The allotment of revised scale vide aforesaid circular was delineated in clause 4 therein as under:

4. The allotment of the revised scales, as in the Annexure will be subject to the following conditions:

(i) While senior grade to Primary School teachers, Trained Graduate teachers/ Headmaster of Primary Schools and Post-Graduate teachers, Headmasters of Middle Schools will be granted after 12 years in the basic grade, the selection grade (non-functional) will be granted after 12 years of service in the senior grade and will be further subject to the attainment of the prescribed level of qualification, viz., Trained-Graduate teacher's qualification in respect of Primary School teachers and Post-Graduate teacher's qualification in respect of Trained Graduate teachers. Both the conditions, viz., completion of 12 years service in the senior grade and acquisition of the prescribed level of additional qualification, must be satisfied for becoming eligible to the selection grade in these cases. For the Vice-Principal/Headmasters of Secondary Schools, there will be only senior grade after 12 years and no selection grade.

(ii) The number of posts in selection grade (non-functional) for Primary School teachers, Trained-Graduate teachers/ Headmasters of Primary School, Post Graduate teacher Headmaster of Middle School will be restricted to 20% of the number of posts in the senior grade of the respective cadre.

(iii) The senior grade and selection grade (non-functional) shall be given only after screening regarding satisfactory performance by an appropriate Departmental Promotion Committee.

(iv) Every teacher would be required to participate in an in-service training programme of at least 3 weeks duration before he/she passes and efficiency bar or is promoted to senior grade or selection grade, i.e., once in every six years: provided that, where arrangements for such training cannot be made, the appointing authority may exempt a category of teachers for a specific period of time. The Ministry of Railways would like it to be ensured that suitable in-service training programmes of the prescribed duration are introduced so that the need for a special dispensation will arise in the rarest of the rare cases.

(v) Although for purposes of grant of selection grade, Primary School teachers and Trained-Graduate teachers will be required to obtain higher qualifications, they will not be required to shift to an institution of higher level.

(vi) Appointment to the posts of Principals, Vice-Principals and Headmasters will be made in all schools on the basis of merit.

10. In course of implementation of aforesaid recommendations some doubt arose as to whether the higher pay scale as per recommendation was to be granted immediately on completion of 12 years regular service or from the date of recommendation of Departmental Promotion Committee. Clarification was accordingly issued by Railway Board Establishment No. I 56/89: No. E(P&A) I87/PS5/PE-5 dated 22-6-1989, point No. 7 wherein raised the question as to: whether for a teacher who has completed 12 years of service in the basic grade as on 1-1-1986, the benefit of fixation of pay in senior grade will be given from 1-1-1986 after screening by DPC. The clarification sought for whether the benefit of fixation of pay in the senior grade will be given only from the date of Departmental Promotion Committee approval." The same was clarified that "the benefit of fixation of pay in the senior grade will be given from the date following completion of 12 years of service in the basic grade, however, orders for the purpose would be issued only after DPC has approved the same." The said issue as apparent from circular was decided with concurrence of Finance Directorate of Ministry of Railways. The aforesaid clarification thus leads no doubt that in point of time whenever the DPC meets the order for grant of senior pay scale would be from the date following completion of 12 years of service in the basic grade and not from the date of recommendation by DPC.

11. One more aspect needs a clarification at this stage. The question cropped up during course of argument as to whether three years ACRs which were required to be seen for adjudging the suitability of an employee for grant of senior scale would be preceding completion of 12 years of regular service or preceding the date when the DPC met.

12. It is already observed that vide clause 4(iii) of Circular dated 11-1-1988 it is provided that the senior grade and selection grade (non-functional) shall be granted only after screening regarding satisfactory performance by an appropriate Departmental Promotion Committee. The circular no where provides for as to the ACRs which are required to be seen would be preceding three years from the date of completion of 12 years of regular service. When inquired from the respondents as to whether any such circular or order passed by Railway Board is in vogue, no material is brought on record to demonstrate and establish that only C.Rs. preceding three years completion of 12 years of regular service would be taken into consideration by the DPC which is constituted to screen satisfactory performance of an employee for grant of senior grade and selection grade. In absence whereof we are inclined to observe that the three years C.Rs. which are required to be seen would be preceding the date when DPC convene its meeting.

13. In the case at hand admittedly a D.P.C. held its meeting on 7-10-1997 and it is in respect of said D.P.C. that review D.P.C. was ordered in O.A. No. 704/2005. In furtherance whereof D.P.C. met on 28-3-2007 and rightly considered the A.C.R. of years 1994-95 (i.e. 1-4-1994 to 31-3-1995), 1995-96 (1-4-1995 to 31-3-1996) and 1996-97 (1-4-1996 to 31-3-1997) and found petitioner suitable. The respondents, therefore, are not justified in taking into consideration the adverse C.Rs. of years previous to 1994-95 and postponing the grant of senior grade w.e.f. 1-4-1997. The Tribunal also in our considered opinion has failed to appreciate the facts and rules in right perspective. Had there been any adverse C.R. after 7-10-1995, the date when the petitioner completed 12 years of service, the respondents as well as the Tribunal would be justified in declining the claim of the petitioner for senior grade from 7-10-1995. The facts, however, as adverted to are not such.

14. In view of above analysis, we are inclined to allow the claim of the petitioner for grant of selection grade w.e.f. 7-10-1995 on the basis of recommendation of the review DPC committee which convened its meeting on 28-3-2007 qua the DPC which met on 7-10-1997.

15. In view whereof we set aside the order passed by the Tribunal and direct the respondents to extend the benefit of senior grade as per recommendation of Chattopadhyaya Pay Commission and as per Railway Board Establishment No. E (P&A) I 87/PC 5/PE-5 dated 11-1-1988 w.e.f. 7-10-1995 with all consequential benefits within a period of 30 days from the date of communication of this order. The petition is allowed to the extent above. However, there shall be no costs.