
(2014) 08 DEL CK 0105
In the Delhi High Court
Case No : W.P.(C) 8422/2008

Krishan Kumar

APPELLANT

Vs

Government of NCT

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Citation : (2014) 08 DEL CK 0105

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : R.K. Saini, Advocate for the Appellant; Shobhana Takiar, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner is aggrieved by an order of the Central Administrative Tribunal (CAT) dated 07.05.2007 in O.A. No. 1711/2006. In the application, he urged that denial of second financial upgradation in the pay scale of Rs. 6,500-10,500/- was contrary to the Assured Career Progression Scheme (ACP) applicable to the Government of National Capital Territory of Delhi ("GNCTD") employees.

2. The brief facts are that the petitioner was appointed as Workshop/Laboratory Attendant by the GNCTD on 11.01.1973. He was subsequently promoted as Laboratory Assistant on 12.03.1993 in the revised pay scale of Rs. 4,000-6,000/-. He was subsequently placed in the pay scale of Rs. 5,000-8,000/- on 23.09.1999. The ACP scheme was introduced with effect from 09.08.1999. The petitioner complained that two of his juniors Rajinder Kumar and Bharat Tiwari were granted second financial upgradation in the pay scale of Rs. 6,500-10,500/- from the grade of Rs. 5,000-8,000/- on 14.09.2001 under the ACP scheme. He represented to the respondent authorities, claiming that he should be given similar benefit. Upon the respondent's denial of his entitlement, he approached the CAT with an application.

3. The CAT rejected the petitioner's claim for grant of second financial upgradation in the pay scale of Rs. 6,500-10,500/-, accepting the GNCTD's arguments that, in fact, the petitioner's placement in the pay scale of Rs. 5,000-8,000/- was a second promotion which disentitled him to the benefit of second ACP.

4. The petitioner contends and his counsel urges - that the CAT's findings with respect to the grant of second promotion was, in the facts of this case, erroneous. It was submitted that the petitioner's first promotion was as Laboratory Assistant on 12.03.1993. For that post, the requisite qualifications were "matriculation with science subject". The petitioner undoubtedly was possessed of this qualification; his juniors were not so qualified. However, they were promoted as Workshop Inspectors in the higher pay scale of Rs. 5,000-8,000/-. Upon the GNCTD being made aware of this anomaly of unqualified juniors being granted a more favourable treatment, the petitioner was also granted the same pay scale of Rs. 5,000-8,000/-.

5. In these circumstances, emphasized learned counsel, the petitioner was beneficiary of only one promotion, contrary to the CAT's findings. Learned counsel relied upon the pleadings of the parties before the CAT in support of his submission that the grant of pay scale of Rs. 5,000-8,000/- did not amount to promotion or up gradation but assignment of pay scale which was due to the petitioner as a better qualified employee, as opposed to his juniors, who were unqualified but were given the benefit of pay grades higher than his own.

6. Learned counsel for the respondents argued that the ACP scheme clearly envisioned that financial upgradation would be purely personal to the employee and would not have any relevance to his seniority position. Other conditions attached to the ACP scheme were that the individual ought not to have been beneficiary of two promotions. In this case, it was contended that the promotion of the said two individuals, i.e. Rajinder Kumar and Bharat Tiwari was because under the Recruitment Rules Workshop Attendants/Laboratory Attendants not possessed of the qualification of matriculation in science could not be promoted as Laboratory Assistants. Consequently, the only option with the GNCTD was to promote them in the grade of Workshop Inspector in the pay scale of Rs. 5,000-8,000/-. Learned counsel submitted that in these circumstances, the petitioner could not have got the benefit of second financial upgradation merely on the ground that his juniors were given a wrong promotion. Reliance was placed upon Point no. 8 of the ACP scheme in this regard which reads as follows:

"The Financial Upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such there shall be no additional financial upgradation for the senior employee on the ground that junior employee in this grade has got higher pay scale under the ACP scheme."

7. It is evident from the above discussion that this Court is called upon to decide

whether the petitioner was entitled to the benefit of second financial upgradation. In order to decide this issue, it is necessary to see whether the grant of pay scale of Rs. 5,000-8,000/- to the petitioner, in the circumstances, of the case, was in fact a promotion.

8. The respondents do not deny that the petitioner was promoted as Laboratory Assistant a regular promotion - on 12.03.1993 in the pay scale of Rs. 4,000-6,000/-. Their contention, however, is that he was subsequently promoted as Laboratory Technician on 23.09.1999 in the pay scale of Rs. 5,000-8,000/-. The respondents refute the petitioner's contention that the promotion of his juniors to higher grades necessitated his being assigned the higher scale of Rs. 5,000-8,000/-. In this regard, the relevant pleadings of the respondent GNCTD in its counter affidavit, i.e. para 4.3 is as follows:

"4.3 That the contents of para 4.3 of the OA are admitted to the extent that the applicant got 1st promotion as a Lab Asstt. in the pay scale of Rs.4000-6000/- on 12.03.93 after the service of 20 years. The applicant was subsequently promoted to the post of Lab. Tech. in the scale of 5000-8000/- vide this order dated 23.09.99. The appointment to the post of Lab. Asstt. and Lab Tech. were promotions and not mere placement or redesignation, as stated in the OA by the applicant, which can also be seen from the fact that applicant himself is accepting this in his representation dated 06.09.2000 and 04.12.2001 which has been annexed in OA filed by the applicant. As regards the promotion of junior is concerned, it is submitted that as per RRs the WSA/Lab Attendant who do not have the qualification of Matric with science cannot be promoted to the post of Lab Asstt. in the scale of 4000-6000/-. The only option available for their promotion is to the post of WSI in the pay scale of 5000-8000/-. Accordingly, Sh. Rajinder Kumar (DOA 28.09.73) and Sh. Bharat Tiwari (DOA 1.2.74) were promoted to the post of WSI vide order dated 26.2.99 & 8.12.98 respectively. Further, Sh. Puran Mal Rawat (DOA 28.9.73), Sh. Sarwan Kumar (DOA 30.5.74), Sh. Sudhir Kumar (DOA 25.11.74), Sh. Vir Bhan (DOA 17.4.75), Sh. Dhanpat Rai (DOA 7.7.76) were awarded scale of WSI and Maintenance Engineer i.e. 5000-8000/- & 6500-10500/- w.e.f. 9.8.99 vide order dated 13.4.2004."

9. It is, therefore, evident that the GNCTD, on the one hand, disputes that the placement of the petitioner in the pay scale of Rs. 5,000- 8,000/- is not a promotion and on the other, it admits that the petitioner's juniors who were unqualified for being considered for appointment to the higher cadre of Laboratory Assistant, were nevertheless promoted as Workshop Inspectors carrying a much higher pay scale of Rs. 5,000-8,000/-. The petitioner's averment that his, "juniors were promoted on promotion from the cadre of Workshop/Laboratory Attendant to the post of Workshop Inspector in the pay scale of Rs.5000-8000/-. On representations the respondent granted to the applicant pay scale of Rs.5000-8000/- instead of Rs.4000-6000/- at par with his juniors and that the designation of Laboratory Assistant was revised to Laboratory Technician which was done on 23.09.1999.." has not been refuted in

the corresponding para of the respondents' reply which merely states, "contents of para 4.2 do not need any comments". In view of these pleadings, the CAT's conclusions that the petitioner was beneficiary of a second promotion in 1999 to the grade of Laboratory Technician is clearly without factual foundation.

10. The starkness of the petitioner's claim is evident from the circumstance that being a senior, qualified and entitled to promotion, he was in fact promoted to the pay scale of Rs. 4,000-6,000/-. Yet the respondents felt that the unqualified junior employees had to be somehow given a higher pay scale of Rs. 5,000-8,000/-, which was done by certain orders. This resulted in an anomaly whereby the petitioner, a qualified senior, was drawing pay in a grade lower than those of his unqualified juniors. Naturally, the anomaly was corrected and the petitioner started enjoying the benefits of higher pay scale. This assignment or placement in the higher pay scale could not ipso facto be considered as promotion in the circumstances; at any rate, not so as to deprive the petitioner the benefit of second financial upgradation even when the very same juniors and unqualified employees were granted the second financial up-gradation later, by an order dated 14.09.2001. The CAT's reasoning, therefore, cannot be accepted.

11. So far as the contention of the respondents in regard to the applicability of Note 8 is concerned, this Court is of the opinion that the petitioner's sole claim for financial upgradation is not based upon his junior's entitlement. In this case, what escaped the CAT's notice was that the petitioner's assignment or placement in the pay scale of Rs. 5,000-8,000/- was to correct the anomaly in the very first instance which occurred as a result of the juniors unqualified ones at that being conferred a higher pay scale. The mere correction of that anomaly by placement of the petitioner in the scale or grade of pay equivalent to that of his juniors did not result in promotion nor is his claim to the second financial upgradation founded entirely upon the juniors being granted such benefit. The denial of such benefit to him on the ground that the placement in the pay scale of Rs. 5,000-8,000/- was a promotion occasioned his approaching the CAT. In these circumstances, the petitioner is clearly entitled to the benefit of second financial upgradation from the date it became due, or latest from the date when his juniors were granted similar benefit in the pay scale of Rs. 6,500-10,500/-.

12. In the light of the above discussion, the writ petition has to succeed and is, accordingly allowed. The respondents are hereby directed to grant to the petitioner the benefit of second ACP on the date when it became due to him, or on the date of the introduction of the ACP Scheme, whichever is later, with the necessary differential pay, emoluments and consequential benefits. The necessary and consequential orders in respect of the pay scale and other benefits shall be issued within four weeks from today.