
(2019) 12 CAT CK 0007

In the Central Administrative Tribunal

Case No : Original Application No. 2048 Of 2014

Kuldeep Singh Dhull

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Citation : (2019) 12 CAT CK 0007

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Ajesh Luthra, Amit Yadav, Ravinder Agarwal, M.K. Bhardwaj

Final Decision : Allowed

Judgement

Pradeep Kumar, Member (A)

1. The applicant was initially appointed on 19.11.1991 as Sub Inspector (Input/ Output Assistant) in Computer Wing of Technical Cadre of Delhi Police. In due course, he was promoted as Inspector (Assistant Programmer) on 25.03.1998 on regular basis.

2. Applicant pleads that in the year 1980, there was only one post of Inspector in Computer Cadre known as Inspector/EDP Programme Assistant/Console Operator. With time and with development of computer applications, more posts were created and they were given different nomenclatures as per nature of work. On 01.02.1989, six posts were created which were known as Assistant Programmer (Inspector) -02 posts and Computer Operator (Inspector) - 04 posts. In due course, a total of 10 posts came to be operated at Inspector level and irrespective of their designation like Inspector (Assistant Programmer) or Inspector (Computer Operator) or Inspector (EDP Programmer Assistant/Console Operator), they were all doing similar kind of work.

3. Similarly, vide notification dated 05.01.1989 some more posts were also created at lower levels namely 08 posts of Inspector Output Assistant at Sub

Inspector level and another 08 posts of Data Entry Operator, also at ASI level.

4. Further promotion from Inspector was to the post of ACP (Programmer) and to start with there was one post only. However, with time and as per needs, two more posts were created in 1990 and 2002. Thus there are now total three posts of ACP (Programmer). The Recruitment Rules (RRs) for this post were notified on 25.09.1980 and it showed that the post could be filled up as under:

"By promotion, failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment."

In respect of eligibility for promotion, these RRs specified the following:

"Inspector (EDP) with 3 years regular service in the grade."

5. The applicant pleads that a post with exact designation as "Inspector (EDP)", never existed and thus the RRs for ACP (Programmer) were faulty to start with as one non-existent post of "Inspector (EDP)" was having channel of promotion to three posts of "ACP (Programmer)" whereas the ten Inspector working in Computer Cell, with different designations, had no promotion channel whatsoever.

6. Accordingly, the correction to the RRs for ACP, was initiated in 1992 but could not be finalized as yet. The rationalization of other designations in computer was also initiated.

All Inspectors with different designations were proposed to be re-designated as Inspector (Computer) and similar action was initiated for lower levels also. This action was initiated in 2002. The RRs for Inspector and lower levels were finally notified in Gazette on 09.01.2013 and it showed 18 posts for Sub-Inspector (Computer) and 10 posts of Inspector (Computer).

7. Due to faulty RRs for the post of ACP (Programmer), the RRs of 25.09.1980 were never put into operation and instead respondents were undertaking ad-hoc promotions from amongst Inspectors of Computer Wing. Two such ad-hoc ACPs namely Shri Virender Singh and Shri Gyanendra Singh Awana filed OA No.3547/2010 claiming regularization with effect from the date of their ad-hoc promotion and for consideration of the next higher post of DCP. This OA was decided on 18.04.2011. The operative para reads as under:

"4. The stand taken by the Respondents is most unjust. The Applicants cannot just remain in a post on ad-hoc basis for 15 years without any heed being paid to their plight by the Respondents. We, therefore, direct the Respondent, Ministry of Home Affairs, and the GNCTD to notify the recruitment rules for the post of ACP (Programmer) within three months of the receipt of a certified copy of this order by taking suitable care that the Applicants have to be regularised within reasonable time of their promotion in 1996, that is, within one or at most two years of their promotion, if a period of probation of one/two year (s) is provided. The OA is disposed of with these directions and with liberty to the Applicants to file a fresh OA for other grievances. Since the Respondents have dragged the

Applicants into litigation because of their own lethargy, each of the Applicant would be eligible for the cost of litigation, which we compute to Rs. 10,000 each."

Applicant pleads that this order clearly indicates that said RRs needed correction for which respondents were granted three months time.

7.1 Thereafter the two petitioners were granted regularization to the post of ACP with effect from the date of their ad-hoc promotion as a onetime relaxation, pending finalization of RRs.

8. The applicant had sought seniority list of Inspectors working in Computer cadre. This was advised vide letter dated 28.11.2011. The same reads as under:

"The seniority wise names of Inspr. Belonging to Computer cadre is as under:

S.N.

Cadre

Name of Officer

Range No.

Cate

DOP/DOA

1.

Asstt. Programmer

Kuldeep Singh

D-I/131

Genl.

25.03.1998

2.

-do-

Shivaji Chauhan

D-I/132

-do-

-do-

3.

-do-

Hari Shankar

D-I/8

SC

06.11.2002

4.

-do-

Surender Kr. Bhugra

Surender Kr. Bhugra

Genl.-

24.07.2003

5.

-do-

Om Prakash Srivastava

D-I/896

-do-

-do-

6.

EDP/Console Opr

Sandeep Malhotra

D-1/135

-do-

13.12.2005

7.

Asstt. Programmer

Vijay Gehlawat

D-1/364

-do-

17.08.2006

8.

-do-

Nisha Dixit

D-I/365

-do-

17.08.2006"

(Emphasis supplied)

9. The applicant brings out that the candidate at serial no.6, namely Shri Sandeep Malhotra having his designation as Inspector (EDP Programme Assistant/ Consoler Operator), had pleaded for promotion to the post of ACP (Programmer) based on RRs of 25.09.1980 on the plea that his designation includes the word "EDP" which is shown as feeder cadre in the said RRs. He preferred a representation which was not decided. Feeling aggrieved, he filed OA No.1713/2013. This was decided on 28.05.2013. Operative para reads as under:

"6. We, therefore, dispose of the Application with the direction to the respondents to take decision on the representation of the applicant within eight weeks from the date of receipt of a certified copy of this order. In the event the representation of the applicant does not find favour, reasons are to be recorded and communicated to the applicant. However, if it is allowed, the respondents shall pass the consequential order in accordance with law expeditiously."

9.1 In compliance to order dated 28.05.2013 in OA No.1713/2013, respondents had passed an order dated 10.09.2013 and claim of applicant for promotion was rejected as amendments to the RRs were currently underway. Shri Sandeep felt aggrieved and had filed another OA No.772/2014.

10. The applicant has preferred the instant OA seeking following relief:

"(a) direct the respondents to immediately finalise the Recruitment Rules for the post of Assistant Commissioner of Police (IT) or (Programmer) (as they may ultimately wish to call), in Computer Wing of Delhi, pending since the year 2002 and

(b) consider and promote the applicant to the said post forthwith w.e.f. the date, he completes the eligibility length of service as would be required under the rules" along with consequential benefits.

11. Respondents have brought out the development of computer cadre over years and efforts made by them to correct the RRs for the post of ACP (Programmer). Respondents 1&2 sent a letter dated 08.10.2002 to Respondent no.4, enclosing the amended RRs for the post of ACP (Programmer) seeking approval of competent authority. In these amended RRs, the designation is kept as ACP (Programmer) and the method of recruitment is shown as by promotion, failing which by transfer on deputation (including short-term contract) and failing both, by Direct Recruitment and the feeder category for promotion was shown as from:

a) Inspector/Assistant Programmer,

b) Inspector/Computer Operator.

c) Inspector/EDP Programmer Assistant/ Console Operator with 3 years' service in the grade rendered after appointment thereto on a regular basis.

Note:- Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service of two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service."

This was approved by respondent no.4 and sent to respondent no.5 vide letter dated 26.04.2013 for approval. This was returned unapproved by respondent no.5 on 23.08.2013 with the following remarks:

"It is observed that the Model recruitment Rules for Group 'A' & Group 'B' posts in Electronic Data Processing Unit, circulated by the DOP&T vide their O.M. dated 14th Oct, 1998, which the proposal is based upon, are age old and significant changes have already been taken place in the educational qualifications of Information Technology sector. In fact, a proposal for modification in the existing educational qualification, as prescribed in the Model RRs, is also under active consideration of the Government in which the consultation between the DOP&T and NIC is already on.

Under the above circumstances, the Commission has now decided that pending finalization of amendment in Model RRs no fresh proposal will be considered further under Single Window Mechanism. Accordingly, your proposal is returned herewith. It is requested that you may come up under Single Window System afresh along with your modified proposal after issuance of fresh Model Recruitment Rules for various Group 'A' & Group 'B' Posts in Electronic Data Processing Unit by the DOP&T."

11.1 Thereafter the respondents no.1&2 have prepared another amended RR and sent to respondent no.4 vide letter dated 11.06.2019 for approval. The method of recruitment is now shown as:

"By promotion failing which by deputation (including short-term contract) and, failing both, by Direct Recruitment."

and the eligibility is shown as:

"Promotion

Inspector/Computer in PB-2 Rs.9300-34800/- with Grade Pay of Rs.4600 (New pay scale as per 7th Pay Commission Matrix Rs.44900-142400 (Level 7) with two years regular service in the grade.

Note1: Where juniors who have completed their qualifying or eligibility service

are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whoever is less, and have successfully completed their probation period for promotion to the next higher grade along-with their juniors who have already completed such qualifying or eligibility service."

11.2 It is pleaded that process of amendment to RR is already under way.

12. Matter has been heard at length. Shri Ajesh Luthra, learned counsel represented the applicant and Shri Amit Yadav, Shri Ravinder Agarwal and Shri M.K. Bhardwaj, learned counsel represented the respondents.

13. Prayer of applicant is to finalize the RRs and to consider him for said post of ACP (Programmer) thereafter, as per amended RRs.

14. There is nothing much to be adjudicated. Facts are clear and admitted by respondents. Tribunal notes with serious concern that process of amendment to RRs for the post of ACP (Programmer) which was initiated in the year 2002 has yet not reached finality. And this is so despite orders dated 18.04.2011 by Tribunal in OA No.3547/2010 (para-7 supra). Such a state of affairs is not acceptable. Employees should not be made to wait for decades for consideration of their promotion and that also for want of RRs for the higher post and especially as the post is vacant.

15. In view of foregoing, respondents no.1,4 & 5 are individually and severally directed to complete the process of amendment to the RRs within a period of three months of receipt of a certified copy of this order and circulate it for information of all concerned.

Once RRs are finalized, the respondents shall consider the case of all eligible officers, including the applicant, as per rules in force for promotion to the post of ACP (Programmer), in three months thereafter.

The applicant shall have liberty to approach the Tribunal, if he has a subsisting grievance, in respect of compliance of this order which is to be complied with in two stages as above.

No costs.